DOCUMENT RESUME

ED 135 789 95 SP 010 847

AUTHOR	Dunkle, Margaret
TITLE	Competitive Athletics: In Search of Equal Opportunity.
INSTITUTION	National Foundation for the Improvement of Education, Washington, D.C. Resource Center on Sex Roles in Education.
SPONS AGENCY	Office of Education (DHEW), Washington, D.C. Women's Program Staff.
PUB DATE	Sep 76
CONTRACT	300-75-0256
NOTE	203p.
EDRS PRICE	MF-$0.83 HC-$11.37 Plus Postage.
DESCRIPTORS	Affirmative Action; Athletic Coaches; *Athletic Programs; Civil Rights; Educational Administration; *Equal Education; Equal Opportunities (Jobs); *Federal Legislation; Scholarship Funds; *Sex Discrimination; *Womens Athletics; Womens Education
IDENTIFIERS	*Education Amendments 1972 Title IX

ABSTRACT

This manual provides institutions with a guide for gathering and evaluating information to assess equal opportunity in their athletic programs and for developing strategies to attain equal opportunity. It was prepared primarily for athletic directors, administrators, coaches, and others concerned with providing equal athletic opportunity in schools. The following topics are discussed: (1) a general plan for evaluating and achieving equal opportunity for women and men in athletic programs; (2) an examination of the equal opportunity act (Title IX); (3) key elements of the equal opportunity requirements; (4) employment--assignment and compensation of administrators, coaches, officials, and other athletic personnel; (5) financial aid to athletes--athletic scholarships; (6) other equal opportunity issues; (7) organizational and structural issues; and (8) the funding of intercollegiate athletic programs. Selected resources are listed. (JD)

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COMPETITIVE ATHLETICS:

IN SEARCH OF EQUAL OPPORTUNITY

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U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

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Joseph A. Califano, Jr., Secretary

Office of Education
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Prepared under Contract 300-75-0256 for the Women's Program Staff,
U.S. Office of Education, Department of Health, Education, and Welfare

SP010 847

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Preface

This manual was developed under contract 300-75-0256 between the Resource Center on Sex Roles in Education and the Women's Program Staff, Office of Education, U.S. Department of Health, Education, and Welfare. It is one in a series of technical assistance materials developed to assist education agencies and institutions in ensuring compliance with Title IX of the Education Amendments of 1972.

The elimination of sex discrimination in the athletic programs, policies, and practices of secondary and postsecondary institutions is one of the requirements of the Title IX regulation. This manual provides institutions with a guide for gathering and evaluating information to assess equal opportunity in their athletics programs and for developing strategies to attain equal opportunity. The manual was prepared primarily for athletic directors, administrators, coaches, and others concerned with providing equal athletic opportunity in colleges and universities, but persons working at the secondary level should find it useful.

The Resource Center is grateful to Margaret Dunkle of the Association of American Colleges' Project on the Status and Education of Women for her authorship of the manual. The author would like to thank Margot Polivy and Bernice Sandler for their helpful comments on segments of the manuscript.

The Resource Center also wishes to acknowledge the advice and assistance provided throughout the project by Joan Duval, Women's Program Staff of the U.S. Office of Education; Becky Schergens, Office of the Assistant Secretary for Education; Reginald Pearman, Office of Education; Sarita Schotta, National Institute of Education; Gwendolyn Gregory, Office for Civil Rights; and Rosa Wiener, Office for Civil Rights. Marguerite Follett, Women's Program Staff, provided guidance in the preparation of the manuscript for final production.

Resource Center staff who contributed to the preparation of the final manuscript include Judy Cusick, Martha Matthews, and Shirley McCune.

September, 1976

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I. INTRODUCTION

Equal opportunity in athletic programs has been the most closely scrutinized and controversial issue raised by Title IX of the Education Amendments of 1972, the landmark law guaranteeing women and men equal educational opportunity. A number of factors are working together to increase concern about, and interest in, intercollegiate athletic competition for women: new sports opportunities for girls at the elementary and secondary level, increased spectator interest in women's athletics in general, the rise of professional athletic opportunities for women, media coverage of women's competitive and professional sports, and the desire of education institutions to comply with Title IX's mandate for equal educational opportunity.

The key section of Title IX reads:

> *No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.*

Institutions receiving Federal assistance must bring their athletic programs into line with Title IX's standards for nondiscriminatory athletics, even if the athletics department itself does not receive direct Federal aid. The "Title IX Questions and Answers," which accompanied the publication of the final regulation, stated that:

> *the Education Amendments of 1974 specifically [state] that: "The Secretary [of HEW] shall prepare and publish. . .proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in Federally-assisted education programs which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports."*
>
> *In addition, athletics constitutes an integral part of the educational processes of schools and colleges and, thus, are fully subject to the requirements of Title IX, even in absence of Federal funds going directly to the athletic programs.*
>
> *The courts have consistently considered athletics sponsored by an educational institution to be an integral part of the institution's education program and, therefore, have required institutions to provide equal opportunity.*

While complying with the Title IX requirement for equal athletic opportunity will undoubtedly involve many specific segments of the academic community, the ultimate responsibility for providing equal athletic opportunity lies with the institution and its chief executive officer.

In the area of athletics, Title IX poses many complex questions, but mandates few absolute actions by institutions. Indeed, the law grants institutions considerable flexibility in developing nondiscriminatory athletic programs tailored to meet the needs of their students. It does not require colleges to duplicate their men's program for women or to offer exactly the same sports in exactly the same fashion for both women and men. Nor does it equate equal opportunity with equal penny-for-penny expense. Rather, it requires *overall* equal athletic opportunity, with specific athletic offerings being determined primarily by the interests and abilities of female and male students.

Interpretations and clarification of this general Title IX mandate for equal athletic opportunity are contained primarily in two documents, both of which are vital to institutions in evaluating their intercollegiate athletic programs for compliance with Title IX:

- The final Title IX regulation, which became effective on July 21, 1975, specifies general criteria and standards which institutions must use in assessing their programs (including athletic programs) for sex bias.
- The "Sports Memorandum," issued by HEW's Office for Civil Rights in September 1975 and formally titled "Memorandum to Chief State School Officers, Superintendents of Local Educational Agencies and College and University Presidents re Elimination of Sex Discrimination in Athletic Programs," provides institutions with additional guidance regarding how they might proceed with their efforts to provide equal athletic opportunity under Title IX.

* * * * *

This manual provides institutions with a framework for gathering information about their women's and men's athletic programs, assessing equal opportunity, and modifying their athletic program to provide equal athletic opportunity. Although it focuses on the most complex area, intercollegiate athletics, the process, principles, and tools described apply to interscholastic sports at the secondary school level as well as to intramural and club sports at the college and secondary level.

This manual is organized into 10 major sections. Following the introduction is an outline of a general plan which institutions may use in evaluating (and achieving) equal athletic opportunity (Section II).

Section III discusses some of the general equal opportunity issues under Title IX.

Section IV takes a detailed look at some of the specific elements of the equal athletic opportunity "laundry list" included in the regulation.

Section V discusses employment discrimination in athletic programs separately, since the adjustment period and other factors unique to athletic programs for students do not apply to employment discrimination.

Section VI treats financial aid to athletes, an issue which is addressed individually in the regulation and which is of special concern to institutions which have extensive athletic scholarship programs.

Section VII identifies and discusses important equal opportunity issues which are included in sections of the regulation other than the athletics section.

Section VIII explores some of the organizational and structural issues which face institutions.

Section IX looks at some of the issues surrounding athletic funding which institutions might wish to explore in evaluating their overall athletic program. Although Title IX does not require equal aggregate expenditures, an analysis of how athletic resources are used can provide institutions with insight and information which can assist them in developing a nondiscriminatory athletic program.

Section X provides an extensive listing of related resources which institutions may draw upon during their assessment of their athletic programs.

Additionally, each major section of this manual is organized into several subsections:

- First, a summary of the specific provisions of the Title IX regulation and any additional guidance provided by the "Sports Memorandum" which HEW's Office for Civil Rights issued in September 1975.
- Second, a discussion of some of the questions and issues raised by these provisions.
- Third, where appropriate, a listing of some suggested alternatives which institutions might consider if they find sex-based inequities.
- Fourth, where appropriate, model assessment tools to assist institutions in gathering relevant data regarding athletic opportunities for women and men at their institution. Because of the diversity of athletic programs from campus to campus, some institutions will find it necessary to revise these tools, tailoring them to address the specific situation at their institution.

II. A GENERAL PLAN FOR EVALUATING AND ACHIEVING EQUAL OPPORTUNITY FOR WOMEN AND MEN IN ATHLETIC PROGRAMS

The Title IX regulation (in section 86.3(c)) requires institutions to undertake a self-evaluation of their programs and activities, including athletic activities. The regulation requires each educational institution to:

> *(i) Evaluate, in terms of the requirements of [the Title IX regulation], its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;*
>
> *(ii) Modify any of these policies and practices which do not or may not meet the requirements of [the regulation]; and*
>
> *(iii) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.*

The regulation (in section 86.3(d)) requires institutions to maintain "a description of any modifications made. . .and. . .any remedial actions taken" on file "for at least three years" following the completion of the required Title IX self-evaluation, and to make these materials available to the Director of HEW's Office for Civil Rights "upon request."

Also, the regulation (in section 86.3(b)) permits institutions to undertake affirmative action to overcome the effects of past discrimination against, or limited participation by, women:

> ***Affirmative action.*** *In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.*

Additionally, the "Sports Memorandum" states that:

> *An institution's evaluation of its athletic program must include every area of the program covered by the regulation. All sports are to be included in this overall assessment, whether they are contact or non-contact sports.*

The "Sports Memorandum" also gives the following general guidance regarding institutional evaluation of athletic opportunities, pointing out that, in determining student interests and abilities, educational institutions "should draw [upon] the broadest possible base of information" and that an "effort should be made to obtain the participation of all segments of the educational community affected by the athletics program":

> *In order to comply with the various requirements of the regulation addressed to nondiscrimination in athletic programs, educational institutions operating athletic programs above the elementary level should:*

(1) Compare the requirements of the regulation addressed to nondiscrimination in athletic programs and equal opportunity in the provision of athletic scholarships with current policies and practices;

(2) Determine the interests of both sexes in the sports to be offered by the institution and, where the sport is a contact sport or where participants are selected on the basis of competition, also determine the relative abilities of members of each sex for each such sport offered, in order to decide whether to have single-sex teams or teams composed of both sexes. . .

(3) Develop a plan to accommodate effectively the interests and abilities of both sexes, which plan must be fully implemented as expeditiously as possible and in no event later than July 21, 1978. Although the plan need not be submitted to the Office for Civil Rights., institutions should consider publicizing such plans so as to gain the assistance of students, faculty, etc. in complying with them.

Discussion

The complex task of evaluating equal opportunity in athletic programs is closely related to the degree to which other segments of the institution provide women with equal opportunity.

Under the Title IX regulation, institutions should have completed a self-evaluation of their programs and activities by July 21, 1976, but secondary and postsecondary schools may have an "adjustment period" until July 21, 1978 to bring their athletic programs fully into line with the regulation. It does not, however, mandate a specific process for evaluating or modifying athletic programs to assure equal opportunity for women and men.

The following plan for evaluation and change is adapted for athletics from the "General Plan for Self-Evaluation" which Emily Taylor and Donna Shavlik proposed in the American Council on Education's working paper on *Institutional Self-Evaluation: The Title IX Requirement.** Although some of the steps of the following plan are required by the Title IX regulation (e.g., submitting an assurance of compliance to HEW and appointing a Title IX coordinator), others are simply suggestions of ways institutions might approach the process of evaluating and achieving equal opportunity for women in athletic programs.**

This suggested plan emphasizes the importance of both strong commitment to equal opportunity by the chief executive officer of the institution and substantial involvement of those persons who manage athletic programs in the process of evaluating and modifying the programs in order to provide equal opportunity. As Taylor and Shavlik said in their working paper:

> *The direct involvement of the highest ranking official is essential to the success of the institutional self-evaluation. . . . His or her commitment to equality of opportunity and full access to all benefits and services offered by the college establishes the climate within which the self-evaluation will proceed.*

THE GENERAL PLAN FOR EQUAL OPPORTUNITY

The following 14 steps describe a process which institutions might use in evaluating their athletic programs for sex bias and implementing modifications aimed at providing their female and male students with equal athletic opportunity.

---

* Emily Taylor and Donna Shavlik, *Institutional Self-Evaluation: The Title IX Requirement* (Washington, D.C.: Commission on Women in Higher Education, American Council on Education, 1975).

** Similarly, a number of general requirements in the Title IX regulation–such as the requirement to adopt and publish a grievance procedure–are not included in this general plan. For additional information about these general requirements, refer to the Title IX regulation and to the self-evaluation guides listed in the last section of this manual.

Step 1. Affirm the institution's nondiscriminatory athletic policy and inform the community that the institution does not discriminate on the basis of sex in providing athletic opportunities. As a starting point, the chief executive officer of the institution should affirm the institution's nondiscriminatory policy in all areas (including athletic programs and activities). The Title IX regulation requires that each institution submit to HEW an assurance (HEW form 639) that it is complying with the provisions of Title IX. Also, the institution must inform students, employees, applicants for admission and employment, sources of referral for such applicants, bargaining units, and others that the institution does not discriminate on the basis of sex in activities or programs (including athletic programs) and that Title IX prohibits such discrimination.

Step 2. Appoint a Title IX coordinator. The Title IX regulation requires that this person have responsibility for coordinating the institution's overall efforts to comply with Title IX regulation and investigating any Title IX complaint that is communicated to the institution. The Title IX coordinator should be knowledgeable about sex discrimination and sex role stereotyping, and be committed to assuring that the institution meets both its moral and legal obligation to provide equal opportunity (including athletic opportunity) for women and men. Additionally, the institution may wish to appoint an *overall* Title IX advisory group.

Step 3. Appoint an Equal Athletic Opportunity Committee (EAOC). This committee would specifically address the issue of inequities in athletics. A key criterion for appointment to this committee should be a strong commitment to equal opportunity regardless of sex. This working committee should be widely representative of both women and men from those groups which are involved with, or concerned about, discrimination and athletics, such as: students (including student athletes), coaches of both female and male teams, administrator(s) with responsibility for intercollegiate athletics, physical education instructors, financial aid officers, and representatives of campus and/or community women's groups. In addition to addressing specific issues regarding equal opportunity and Title IX compliance, the EAOC can use this opportunity to evaluate differences in philosophy or practice between women's and men's athletics in light of the overall educational purposes and goals of the institution.

Step 4. Inform the campus community of progress and efforts regarding equal opportunity in athletics. The Title IX coordinator and the EAOC should work together to issue reports and otherwise inform groups concerned with athletic opportunities on campus of their progress and efforts. (Relevant groups include student and faculty governing bodies, alumnae and alumni councils, administrative units, commissions on the status of women, women's centers, trustees, and unions.) Additionally, open meetings should be held to give individuals and groups an opportunity to have input into the factfinding stage and to be informed of findings and proposed changes. Periodic progress reports in campus newspapers can also be a useful mechanism for soliciting input from the campus community and disseminating results and recommendations.

Step 5. Identify responsible persons and offices, and other sources of information. Identify the offices and persons directly responsible for the various aspects of athletic programs and publicize this information. Also, identify additional sources of information, using the sources of information regarding athletics listed on page 9 as a starting point.

Step 6. Develop a factfinding tool or evaluation model. Using the model assessment tools included in this manual as a starting point, construct a comprehensive factfinding tool which will provide information on all aspects of women's and men's athletics, including the degree to which the athletic opportunities at the institution accommodate the interests and abilities of women and men. Assistance from knowledgeable social scientists and other trained observers on campus, as well as from persons in fields related to athletics (e.g., physiology, health and recreation), can be especially helpful in assuring that the final evaluation covers all areas where there might be either overt or subtle discrimination.

Step 7. Get the facts. Using the evaluation tools developed in the previous step, undertake a factfinding inventory to determine the current status of athletic opportunities for women and men at the institution. Assign initial responsibility for assessing and reporting this factual information to those persons directly responsible for the various aspects of conducting the athletic programs. (It is suggested that a female-male team approach be used to gather these data, especially where there are separate administrative structures for the conduct of women's and men's athletics.) Set time frames for completing this factfinding study and for submitting a complete report on current policies and practices to the EAOC and the Title IX coordinator.

Step 8. Confirm the facts and issue a preliminary status report. Submit this factual information to appropriate individuals and groups (e.g., administrators, students, women's groups) for confirmation of facts and completeness and for initialing by appropriate officials. Also make this information readily available to other interested persons. These persons should have sufficient access to information to enable them to verify these facts.

Step 9. Identify alternatives, propose modifications, and make recommendations. The persons and offices directly responsible for the various aspects of women's and men's athletic programs and the EAOC should work together to identify alternatives, propose modifications, and develop recommendations designed to bring the institution's athletic program into compliance with Title IX and provide equal athletic opportunity for students. Set deadlines for adding these proposed modifications and recommendations to the preliminary status report and submitting this expanded report (i.e., with recommendations and proposed modifications) to the Title IX coordinator. Suggested modifications and recommendations should be accompanied by a discussion of the rationale for the changes and a timeline designed to bring the institution fully into compliance with Title IX as soon as possible, but no later than July 21, 1978, the date on which the 3-year "adjustment period" for secondary and postsecondary athletics expires.

Step 10. Submit the report (with proposed modifications and recommendations) to the Title IX coordinator. The Title IX coordinator should then notify the campus community of the existence and location of the report, and encourage interested persons to study it and submit comments (preferably in writing) to the coordinator and the EAOC.

Step 11. Revise the recommendations and suggested modifications. The Title IX coordinator and the EAOC should consider all comments and revise the recommendations and proposed modifications of policies and practices as appropriate. Persons or offices directly responsible for running the various aspects of athletic programs should have the opportunity to review any proposed revisions and comment (preferably in writing) on their anticipated impact.

Step 12. Submit the final report to the chief executive officer for final action and publicize this report. The final report (which includes the initial factfinding status report, and the revised recommendations and suggested modifications) should be submitted to the chief executive officer of the institution for final action within a specified number of days or weeks. This report should be publicized and widely available for review by interested persons.

Step 13. Publicize and keep on file modifications of policies and practices and remedial and affirmative steps. The Title IX regulation requires that copies of modifications or remedial steps taken to bring the institution into compliance be kept on file at the institution for at least 3 years.

Step 14. Conduct follow up evaluations. The Title IX coordinator and the EAOC should work together to conduct periodic evaluations in order to monitor progress and identify possible additional problems, alternatives, and modifications. Six-month intervals for submitting these interim evaluations are suggested: January 21, 1977; July 21, 1977; January 21, 1978; and July 21, 1978 (the end of the 3-year adjustment period for secondary and postsecondary athletic programs).

SOURCES OF INFORMATION REGARDING ATHLETICS

Because of the diversity among, and complexity of, athletic programs, the number of possible sources of information regarding them is extensive. The following compilation of suggested sources of information was expanded from the materials listed in the manual on *Complying with Title IX: Implementing Institutional Self-Evaluation* by Martha Matthews and Shirley McCune.* This listing is intended to provide institutions with some suggestions regarding the information which they might gather in order to conduct a meaningful evaluation of their total athletic program:

- Annual or other reports of the women's and men's athletic programs
- Athletic fundraising letters from the institution, athletic departments, programs for women and men, booster club, etc.
- Collective bargaining agreements
- Contractual agreements or guarantees made with other institutions
- Contractual or other agreements which are made with student athletes who are recruited to participate in intercollegiate athletics
- Descriptions of any awards, recognition, special services, etc. which are available to student athletes
- Descriptions of coaching, tutoring, training, medical and related services provided to student athletes and the criteria for eligibility
- Descriptive materials concerning athletic facilities and equipment, including schedules for use, inventories, and policies regarding student access
- Financial and budget records, purchase orders, etc. of booster clubs, related athletic corporations, institutional foundations, etc.
- Financial and budget records, purchase orders, etc. of "nonathletic" parts of the institutions which provide any in kind support to athletics or student athletes (e.g., the physical education departments, health service, maintenance fund, publicity and public relations departments, housing and dining services, financial aid office, etc.). (Note that, in public institutions, much of this financial information is published and available in some form.)
- Financial and budget records, purchase orders, etc. of the women's and men's athletic programs. (Note that, in public institutions, much of this financial information is published and available in some form.)
- Health or insurance policies available to student athletes
- Institutional publications (e.g., bulletins, alumni/ae newspapers, newsletters, journals) which contain stories or items about women's or men's athletic teams
- Job descriptions, vitas, and contracts of persons employed in the women's and men's athletic programs
- Listings and descriptive materials regarding club sports and intramural programs, including relevant club constitutions, bylaws, membership or participant information, rosters of players, etc.

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* Martha Matthews and Shirley McCune, *Complying with Title IX: Implementing Institutional Self-Evaluation* (Washington, D.C.: National Foundation for the Improvement of Education, 1976).

- Listings and descriptive materials regarding intercollegiate athletic programs or offerings, including catalogs, publications of the athletic departments, student handbooks, etc.

- Onsite inspections of the equipment, supplies, uniforms, locker rooms, practice and competitive facilities, housing and dining facilities, medical and training facilities, etc. available to women's and men's teams or to female and male student athletes

- Organizational charts of the administration of the women's and men's athletic programs

- Policy materials relating to eligibility for participation in any component of the athletic program

- Policy materials regarding leave, benefits, and other conditions of employment which affect persons employed in the women's and men's athletic programs

- Policy materials relating to the operation or administration of athletic programs or offerings

- Program plans regarding the current operation of, or future plans for, athletic programs, including plans for building or remodeling facilities

- Publications and brochures distributed by the women's and men's athletic programs describing recruiting, athletic financial aid, etc.

- Publications of the financial aid office regarding financial aid opportunities, especially opportunities for athletic financial assistance

- Publicity issued during the past year concerning sports events or team members, including sports press releases developed or disseminated by the athletic department, booster club, etc.

- Records of student participation in athletics from 1972 to the present

- Regional or national data regarding the interest and abilities of students in athletics

- Reports by the women's and men's athletic programs to the regional and national sports governing organizations to which they belong. (These reports are likely to be especially helpful for obtaining information regarding recruiting and scholarship practices.)

- Rosters of players on intercollegiate athletic teams

- Rules and regulations, bylaws, membership information, philosophical statements, fee schedules, and other publications of regional and national athletic associations, organizations, and conferences

- Season schedules of all women's and men's intercollegiate, intramural and club athletic events operated or sponsored during the current year (and during each previous year back to 1972 if possible)

In addition to reviewing the written information identified above, institutions may wish to gather valuable but more informal information through:

- Interviews, discussions, and meetings with coaches, administrators, teachers and students in "feeder" high schools

- Interviews, discussions, and meetings with female and male athletic program personnel (including coaches, trainers, and administrators), physical education personnel, administrators, faculty, faculty sponsors of clubs or intramural athletic events, game officials, housing and dining personnel, public relations and publications staff, and others involved with, or knowledgeable about, athletics at the institution

- Interviews, discussions, and meetings with female and male students (including students participating in intercollegiate athletics, students participating in intramural and club sports, and students *not* participating in any athletic programs), academic tutors, and other students involved with, or knowledgeable about, athletics at the institution

SOME TECHNICAL POINTS TO KEEP IN MIND

The following suggestions are intended to assist institutions in gathering meaningful information when using the model assessment tools in this manual:

- Always list sports in alphabetical order in order to facilitate obtaining an overview of any one sport, as well as comparing differences in the same sport for women and men.

- Choose either the last or current academic year and provide the information requested on all of the model assessment tools for the same year.

- If an institution provides extensive "mixed team" intercollegiate athletic opportunities (i.e., teams on which both women and men compete), add additional categories to the model assessment tool to gather relevant information regarding these categories.

- If men's football and men's basketball are not treated differently from other men's athletics in *any* manner, consider deleting these categories from the model assessment tools.

- If sports other than men's football and men's basketball receive different treatment, add categories to facilitate gathering information on these sports.

- In providing information regarding the "source of funds" for the various items to consider in evaluating equal opportunity, refer to the model assessment tools in section IX of this manual for a comprehensive listing of the possible sources of funds. The examples provided on the specific model assessment tools throughout this manual are not intended to be all-inclusive.

- When a specific area, such as equipment or travel, receives funds from more than one source, all such sources should be listed under the "source of funds" category. Additionally, the proportion or amount of funds from each source should be indicated to the extent possible.

- Several of the model assessment tools ask for information regarding the cost per student, student-coach ratio, etc. Refer to the third chart under "The Selection of Sports and the Levels of Competition" for the information regarding the number of students participating in each sport which is needed to calculate these figures.

III. EQUAL ATHLETIC OPPORTUNITY UNDER TITLE IX

The Title IX regulation contains a broad mandate for equal athletic opportunity. It generally requires (in section 86.41(a)) that:

> *No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by recipient, and no recipient [institution] shall provide any such athletics separately on such basis.*

Although the Title IX regulation does permit separate teams for contact sports and when team selection is based on competitive skill, it contains an overriding "equal opportunity" clause (in section 86.41(c)), which states that:

> *A recipient [institution] which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director [of HEW's Office for Civil Rights] will consider, among other factors:*
>
> *(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;*
>
> *(ii) The provision of equipment and supplies;*
>
> *(iii) Scheduling of games and practice time;*
>
> *(iv) Travel and per diem allowance;*
>
> *(v) Opportunity to receive coaching and academic tutoring;*
>
> *(vi) Assignment and compensation of coaches and tutors;*
>
> *(vii) Provision of locker rooms, practice and competitive facilities;*
>
> *(viii) Provision of medical and training facilities and services;*
>
> *(ix) Provision of housing and dining facilities and services;*
>
> *(x) Publicity.*

Also, although "unequal aggregate expenditures" for female and male teams do not constitute automatic noncompliance with Title IX, the Director of HEW's Office for Civil Rights "may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex."

The "Sports Memorandum" provides further clarification of the overall objective of the Title IX regulation in the area of equal athletic opportunity:

> *The point of the regulation is not to be so inflexible as to require identical treatment in each of the matters listed [in the athletics section of the regulation]. During the process of self-evaluation, institutions should examine all of the athletic opportunities for men and women and make a determination as to whether each has an equal opportunity to compete in athletics in a meaningful way. The equal opportunity emphasis in the regulation addresses the totality of the athletic program of the institution rather than each sport offered.*
>
> *Educational institutions are not required to duplicate their men's program for women. The thrust of the effort should be on the contribution of each of the categories to the overall goal of equal opportunity in athletics rather than on the details related to each of the categories.*

Additionally, the "Sports Memorandum" makes clear that the equal opportunity requirements of the Title IX regulation cover both the conduct of athletic programs and the award of athletic scholarships:

> *In the development of the total athletic program. . .educational institutions, in order to accommodate effectively the interests and abilities of both sexes, must ensure that equal opportunity exists in both the conduct of athletic programs and the provision of athletic scholarships.*

Discussion

The overall equal athletic opportunity provisions of Title IX apply to *all* sports, including contact and competitive sports which the institution offers on a single-sex basis. Also, these equal opportunity requirements are independent of the source of funding for a particular team or athletic program. Hence, the fact that a woman's program is primarily supported by the women's physical education department, while the men's program is primarily supported by student fees or an athletic booster club, does not alter the *institution's* overall obligation to provide equal opportunity.

At the same time, it should be noted that Title IX does not require the women's athletic program to become a carbon copy of the men's athletic program. It is, for example, possible for an institution to be in compliance with the Title IX athletic requirements while offering or emphasizing different sports for women and men or while belonging to different sports governing associations for women and men.

Although the athletic "laundry list" may at first appear to be comprehensive, it does not include all factors which might affect equal athletic opportunity for women in any given institution. While the key elements of the Title IX equal opportunity laundry list are listed in a separate section in this manual for the convenience of the user, institutions should keep in mind that the enumeration of items on the laundry list is not intended to limit the institution's consideration of equal opportunity to those areas only. Indeed, HEW's Office for Civil Rights might well consider other factors or items during a particular compliance investigation or review.

If an institution finds that it is not providing overall equal opportunity, it must modify various aspects (ranging from the selection of sports to the provision of equipment and other services) so that the women's and men's athletic programs, when taken as a whole, provide equal opportunity to both female and male students.

THE THREE-YEAR "ADJUSTMENT PERIOD"

Title IX allows colleges until July 21, 1978 to bring their athletic programs fully into line with the standards for compliance outlined in the Title IX regulation. The regulation (in Section 86.41 (d)) states that:

> *A recipient [institution] which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than [July 21, 1978].*

The "Sports Memorandum" states that this adjustment period also applies to athletic scholarships:

> *Because of the integral relationship of the provision relating to athletic scholarships and the provision relating to the operation of athletic programs, the adjustment periods for both are the same.*

This adjustment period does not, however, apply to *employment* discrimination within athletic programs (including the employment of students). The Title IX prohibitions against employment discrimination throughout covered institutions are now fully in effect, as are a number of similar Federal, State and local prohibitions against sex discrimination in employment.

The "Sports Memorandum" emphasizes that:

> *The adjustment period is not a waiting period. Institutions must begin now to take whatever steps are necessary to ensure full compliance as quickly as possible. Schools may design an approach for achieving full compliance tailored to their own circumstances; however, [the required Title IX] self-evaluation. . .is a very important step for every institution to assure compliance with the entire Title IX regulations, as well as with the athletics provisions.*

Discussion

Title IX became law in July 1972, even though the regulation implementing it was not in effect until July 1975. Athletic and physical education programs on the secondary and post-secondary levels are unique under Title IX because the regulation does not require immediate compliance. Rather, colleges and universities are given up to three years (until July 21, 1978) to comply fully with the provisions of the regulation. (The 1-year adjustment period for elementary schools ended on July 21, 1976.)

If an institution cannot comply immediately with the athletic provisions of Title IX, it must be able to justify its use of the adjustment period by being able to demonstrate that there are real barriers or obstacles to achieving immediate parity for students of both sexes and that the institution is taking steps, with specific timetables for their implementation, to overcome these barriers. Lack of a woman coach to supervise the locker room for women students is not an example of a barrier which justifies delay. Appropriate actions during the adjustment period might include training staff, revising existing programs, rescheduling training and contests, and constructing or remodeling facilities.

DETERMINING STUDENT INTEREST AND ABILITY

The Title IX regulation (in section 86.41(c)) states that one of the factors which the Director of HEW's Office for Civil Rights "will consider" in determining whether [illegible] not an institution is providing female and male athletes with overall equal opportunity is "whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes."

The "Sports Memorandum" specifies that institutions should move quickly to:

> *Determine the interests of both sexes in the sports to be offered by the institution and, where the sport is a contact sport or where participants are selected on the basis of competition, also determine the relative abilities of members of each sex for each such sport offered, in order to decide whether to have single sex teams or teams composed of both sexes. (Abilities might be determined through try-outs or by relying upon the knowledge of athletic teaching staff, administrators and athletic conference and league representatives.)*

Regarding the scope and method of the institutional assessment of interests and abilities, the "Sports Memorandum" provides the following guidance:

> *In determining student interests and abilities. . .educational institutions as part of the self-evalution process should draw the broadest possible base of information. An effort should be made to obtain the participation of all segments of the educational community affected by the athletics program, and any reasonable method adopted by an institution to obtain such participation will be acceptable.*

Following this determination institutions should:

> *Develop a plan to accommodate effectively the interests and abilities of both sexes, which plan must be fully implemented as expeditiously as possible and in no event later than July 21, 1978. Although the plan need not be submitted to the Office for Civil Rights, institutions should consider publicizing such plans so as to gain the assistance of students, faculty, etc. in complying with them.*

In discussing factors which institutions should consider in determining whether or not to provide separate teams for women and men, the "Sports Memorandum" cautions that:

> *If by opening a team to both sexes in a contact sport an educational institution does not effectively accommodate the abilities of members of both sexes,. . .separate teams in that sport will be required if both men and women express interest in the sport and the interests of both sexes are not otherwise accommodated. For example, an institution would not be effectively accommodating the interests and abilities of women if it abolished all its women's teams and opened up its men's teams to women, but only a few women were able to qualify for the men's team.*

Finally, regarding athletic financial aid, the "Sports Memorandum" states that:

> *In the development of the total athletic program,. . .educational institutions, in order to accommodate effectively the interests and abilities of both sexes, must ensure that equal opportunity exists in both the conduct of athletic programs and the provision of athletic scholarships. . .*
>
> *The thrust of the athletic scholarship section is the concept of reasonableness, not strict proportionality in the allocation of scholarships. The degree of interest and participation of male and female students in athletics is the critical factor in determining whether the allocation of athletic scholarships conforms to the requirements of the regulation.*

Discussion

"Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes" has become the touchstone of institutional compliance with the "equal athletic opportunity" provisions of Title IX. Hence, both in determining what athletic opportunities to offer women and men, and in being able to justify differences between the women's and men's programs as nondiscriminatory, institutions must have some measure of what the athletic "interests and abilities of students" are.

The degree of student interest (or lack of interest) in athletic activities has long been used by institutions to determine what sports they would offer and to facilitate their long- and short-range planning. For example, in his 1970 study of the financing of men's intercollegiate athletics, Mitchell H. Railborn reported that the most frequently cited reason for planned additions to the men's sports program was "to satisfy student interest and requests for particular sports." Similarly, over half of the institutions he surveyed which were *discontinuing* one or more sports cited "lack of student interest" as a reason for the discontinuation.

The "interests and abilities" of female athletes have often been accorded less weight than the "interests and abilities" of male athletes in determining what sports and what levels of competition an institution will offer. Title IX requires that the interests and abilities of both sexes be accommodated so that the overall athletic program provides equal opportunity for women and men.

What may initially appear to be a lack of interest by women may actually be the result of lack of athletic opportunity in the past. For example, in many instances women have not had the same opportunity as their male counterparts to develop and explore athletic skills and interests. The absence of *expressed* interest by women can often be viewed as a sign that the institution needs to increase the awareness of women of athletic opportunities and to develop club, intramural, and recreational programs, as well as intercollegiate athletics, for women.

While the "Sports Memorandum" states that institutions "should draw [upon] the broadest possible base of information" in determining student interests and abilities, neither this memorandum nor the regulation mandates a specific method or process for conducting the evaluation. Although the process should be comprehensive, institutions should keep in mind that they are not required by Title IX to satisfy *all* of the real or imagined athletic interests or abilities of *all* students. Nor are they required to make the sports or opportunities available to women and men identical. Rather, they are required to satisfy the interests and abilities of women *to the same degree* as they satisfy the interests and abilities of men, by providing competitive opportunities which address the interests and abilities of each sex equally.

In gathering and evaluating these data, it should be kept in mind that student interest and ability are not static. This is especially true for female athletes who in the past have not had an equal *opportunity* to explore their athletic interest or develop their athletic abilities. The interests and abilities of women are likely to increase markedly in the future for a variety of reasons: increased community and recreational sports activities for women and girls, increased sports opportunities at the elementary and secondary level, and changing social attitudes about women in athletics. Hence, most institutions can expect to see the athletic interests and abilities of females increase more rapidly in the near future than the interests and abilities of males.

Although data about the interests and abilities of female and male athletes will need to be regularly updated and revised, the availability of these data and the process of revising them will enable institutions to develop coherent long-range plans for nondiscriminatory athletic programs and provide baseline data against which progress can be measured.

While athletic interest is not simple to quantify, efforts should be made to gather as much *specific* information as possible. Questions which might be explored include:

- What specific sports satisfy (or don't satisfy) the interests and abilities of female and male students? What different sports are preferred by women and men?

- What is the relative skill level of the female and male students, and in which sports?

- What skill level or intensity of competition would female and male students like?

- Do students prefer single-sex or mixed teams? Does this preference vary by the type or competitive intensity of the sport?

- Why did high school athletes either continue or not continue to participate in sports in college? What specific factors led to this decision? Were these factors different for female and male students? What would have increased their likelihood of participating?

- What role does the availability of athletic financial aid play in interest in intercollegiate competition by women and men?

- What are the perceptions of student athletes—and students generally—towards the campus environment for women athletes?

Much of the information regarding student interests is likely to be relatively "soft." However, these soft data, coupled with the process of gathering and evaluating them, can be essential to developing meaningful long-range athletic plans and to informing the campus community of the institution's increased concern with athletic opportunities for women.

The "Sports Memorandum" suggests several methods for obtaining information about the abilities of female and male athletes, specifically, holding try-outs and drawing upon the knowledge of female and male athletic teaching staff, administrators, and athletic conference and league representatives.

No one method is likely to provide adequate information. Therefore, the following additional methods for determining the interests and abilities of students should also be considered:

- Interviews, discussions, and meetings with female and male students not currently participating in the athletic programs of the institution to determine specifically *why* they are not participating (e.g., too few team opportunities, lack of scholarships, "their" sport isn't available, level of competition isn't compatible with their skills, lack of interest in sports generally), if they would participate if there were other athletic opportunities available, if they prefer single-sex or mixed teams, etc. In evaluating this information for Title IX purposes, institutions should pay special attention to differences in responses given by female and male students regarding athletic opportunities. The answers of students who are relatively highly skilled, but not currently participating in intercollegiate athletics, should be given especially careful consideration in evaluating this information.

- Interviews, discussions, and meetings with female and male student athletes to determine their current interests and abilities, newly emerging interests, and their perceptions of the interests and abilities of other students, as well as their perceptions of the degree to which the institution is providing athletic opportunities for female and male students to accommodate these interests and abilities.

- Evaluation of the relative participation of female and male students in intramural, club, and recreational athletic events.

- Interviews, discussions, and meetings with female and male physical education teachers and coaches to determine their perceptions of the interests and abilities of students, their perceptions of changes in interests and abilities, their plans for increasing physical education or other sports opportunities for women, and other issues regarding the interests and abilities of students.

- Interviews, discussions and meetings with female and male physical education teachers, coaches, administrators, and students in relevant "feeder" high schools to determine their perceptions of the interests and abilities of students, their observations of changes in interests and abilities, their plans for increasing athletic opportunities for girls and women, and other issues regarding the interests and abilities of students.

- Questionnaires to, or surveys of, the above groups to determine their perceptions or knowledge of the interests and abilities of female and male students. Student surveys during registration or orientation or in physical education classes have the advantage of avoiding "ballot stuffing" and of reaching a number of students who might not otherwise complete such a questionnaire.

- Onsite observation of competitive events, as well as physical education classes, club sports and intramural sports, offered by the institution.

- Similar onsite observation at relevant "feeder" high schools to the institution, if there are any.

In line with the open evaluation process suggested earlier in this manual, the results of any determination of student interest and ability, the plans for changes based on these results, and the rationale for these changes should be widely available for review and comment.

THE STANDARDS FOR SEPARATE TEAMS

Title IX allows institutions to operate separate teams for women and men for contact sports or when selection for teams is based on competitive skill. Specifically, the regulation [in section 86.41 (b)] provides:

> *Notwithstanding the requirements of [the regulation's general prohibition against discrimination in athletics], a recipient [institution] may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient [institution] operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.*

The "Sports Memorandum," in describing the evaluation process for determining whether or not an institution is providing equal opportunity, specifies that institutions should consider student interests and abilities, whether a sport is a contact sport, and whether participants for each sport are selected on the basis of competition "in order to decide whether to have single-sex teams or teams composed of both sexes." This memorandum spells out that:

> *Contact sports and sports for which teams are chosen by competition may be offered either separately or on a unitary basis.*
>
> *Contact sports are defined as football, basketball, boxing, wrestling, rugby, ice hockey and any other sport the purpose or major activity of which involves bodily contact. Such sports may be offered separately.*
>
> *If by opening a team to both sexes in a contact sport an educational institution does not effectively accommodate the abilities of members of both sexes*

> *. . .separate teams in that sport will be required if both men and women express interest in the sport and the interests of both sexes are not otherwise accommodated. For example, an institution would not be effectively accommodating the interests and abilities of women if it abolished all its women's teams and opened up its men's teams to women, but only a few women were able to qualify for the men's team.*

Discussion

Historically, intercollegiate athletic opportunities for women have been separate and unequal. That is, women have competed with only women (and men have competed with only men), and women have had far fewer competitive opportunities than men. Although the athletic standards under Title IX permit separate competition by women and men, the regulation requires that such competition provide "equal opportunity" to women and men. Even when an institution offers separate teams, it must not discriminate on the basis of sex in providing equipment or supplies, or in any other manner.

The decision of whether to offer single-sex teams or one team open to both sexes should focus on the concept of equal opportunity. That is, what mix of female, male, and coeducational teams will best provide equal opportunity to both women and men? If, for example, an institution offers basketball for men and the only way it can accommodate the interests and abilities of women is to offer a separate basketball team for women, then the institution must offer the separate team for women.

The standards for separate teams are somewhat different for contact sports and noncontact sports. The Title IX standards for *noncontact sports* vary, depending on whether or not *overall* athletic opportunities for women or men at the institution have been limited in the past. If an institution has only one team in a noncontact sport (either for women or for men, but not both), it must allow the other sex to compete for a sport on this team only if overall athletic opportunities at the institution for the "excluded sex" have been "limited" in the past. In making this determination, it is important for institutions to examine athletic opportunities *overall*, rather than on a sport-by-sport basis. Institutions might assess past female-male intercollegiate participation ratios, the past budgets of female and male teams, and the number of sports offered in the past to determine if there have been limited opportunities for one sex.

If, for example, an institution has only a "men's" team in a *noncontact sport* (such as track), it must allow women to compete for a spot on this team if *overall* athletic opportunities for women at that institution have been limited in the past. This same standard applies to men: that is, they must be allowed to try out for women's teams if and only if *overall* athletic opportunities for men at the institution had been limited in the past. In practice there are few institutions where the overall athletic opportunities for men have been less than those for women. Hence, even if there were no men's tennis team, an institution would *not* have to allow a man to try out for the woman's tennis team unless he could show that the *overall* athletic opportunities (not just tennis opportunities) for men at that institution had been limited in the past. Similarly, men must be allowed to try out for the women's volleyball team *only if* overall athletic opportunities for men had been limited in the past (even if there were no *men's volleyball* team at the institution).

For purposes of deciding whether a woman must be allowed to compete for a spot on a "men's" team in a noncontact sport, intercollegiate athletics should be considered separately from club and intramural athletics. For example, if an institution offered a noncontact sport, such as gymnastics or swimming, to men (but not women) at the *intercollegiate* level and to women only at the *club* or *intramural* level, women must be allowed to try out for the "men's" *intercollegiate* team if the overall athletic opportunities for women at the institution had been limited in the past. Also, even if an institution has in the past provided the same number of *intramural* activities for women as it has *intercollegiate* activities for men, for purposes of Title IX, athletic opportunities for women have been "limited."

If an institution has only a "men's team" in a noncontact sport, it can preclude women from trying out for it only if it can demonstrate that overall athletic opportunities for women have *not* been limited in the past.

Also, in a specific noncontact sport, if an institution has separate teams for women and men, it can limit women to trying out for the "women's teams" and men to trying out for the "men's teams." For example, an institution *could* prohibit (but is not required to prohibit) a female swimmer from trying out for the men's swimming team if the institution had a woman's swimming team. If an institution wished to, it could institute a policy or standard analogous to that used when there is only one "single sex" team in a noncontact sport. That is, the institution *could* allow the sex which had previously been offered limited athletic opportunities to compete for spots on teams operated for the other sex (but not vice versa). Although institutions have the option of adopting this policy, the decision of whether or not to do so should be made in light of the overall equal opportunity requirements of Title IX.

For *contact sports* (such as football) an institution may prohibit a woman from trying out for the "men's" team, even if overall athletic opportunities for women at the institution have been limited in the past. Similarly, a man could be prohibited from trying out for the women's basketball team (since the regulation defines basketball as a contact sport), even if he could show that the overall athletic opportunities for men at that institution had been limited in the past.

The Title IX regulation defines contact sports as boxing, wrestling, rugby, ice hockey, football, basketball, and "other sports the purpose or major activity of which involves bodily contact." Sports such as softball and baseball are *not* contact sports under Title IX. However, beyond this, HEW has not clearly defined which, if any, sports, in addition to those specifically mentioned in the regulation, it considers to be "contact sports." If an institution believes that designating a sport as a contact sport ("the purpose or major activity of which involves bodily contact") will best forward equal athletic opportunity, it should ask HEW's Office for Civil Rights to make a determination as to whether or not that sport is a "contact sport" under Title IX. In the absence of such a determination by HEW, institutions should assume that the sport in question is *not* a contact sport. (And, hence, if an institution offers only one single-sex team in this sport, persons of the opposite sex can try out for the team if their previous overall athletic opportunities at the institution have been limited.)

It should be noted that, while Title IX allows separate teams for women and men in contact sports, it does not require them. Institutions will wish to make such determinations based on the overall equal athletic opportunity provisions of Title IX.

THE SELECTION OF SPORTS AND THE LEVELS OF COMPETITION

The Title IX regulation (in section 86.41(c)) states that one of the factors which the Director of HEW's Office for Civil Rights "will consider" in determining whether or not an institution is providing female and male athletes with overall equal opportunity is "whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes."

Regarding athletic scholarships, the "Sports Memorandum" also provides the following:

> *Institutions should assess whether male and female athletes in sports at comparable levels of competition are afforded approximately the same opportunities to obtain scholarships. Where the sports offered or the levels of competition differ for male and female students, the institution should assess its athletic scholarship program to determine whether overall opportunities to receive athletic scholarships are roughly proportionate to the number of students of each sex participating in intercollegiate athletics.*

Additionally, the "Sports Memorandum" states that "educational institutions are not required to duplicate their men's program for women."

Discussion

A primary concern of the equal opportunity provisions of the Title IX regulation is that the types of sports offered and the competitive intensity of these programs be equally compatible with the interests and abilities of female and male students. The regulation does not require that the sports offered or the levels of competition be exactly the same for both women and men.

Traditionally, there have been fewer teams (and team openings) for women than for men. Also, those teams that have been provided for women have often not afforded the same relative level of competition available to men.

For Title IX purposes, club sports and intramural athletic events may be single sex if they are either contact sports or if the selection for these teams is based on competitive skill. Club sports and intramural athletic events that are not contact sports or for which participation is based on something other than competitive skill (such as interest), may not be single sex.

If an institution has an extensive "competitive" and/or "contact" club or intramural program (of, if completion of the brief model assessment tools on club and intramural programs indicate that there may be sex bias), the institution may find the more extensive assessment tools and criteria in this manual useful starting points in assessing equal opportunity in these areas, as well as in intercollegiate athletics. The equal opportunity provisions and requirements for "competitive" and/or club and intramural sports are identical to those for intercollegiate sports.

While an intramural or club program is not a substitute for intercollegiate competition if there is sufficient interest and ability by students to warrant it, a strong intramural and club program can be the spawning ground for future intercollegiate competition.

Strategies for Equal Opportunity

If an institution finds that it is not providing women and men equally with a selection of sports and levels of competition which accommodate their interests and abilities, it might consider taking the following steps:

- Increase the number of athletic opportunities for women at the intercollegiate level.
- Increase the number of "contact," "competitive" and other athletic opportunities for women at the club and/or intramural level.
- Provide the resources necessary to increase the *level of competition* of women's teams (e.g., provide additional needed equipment, supplies, etc.; increase or upgrade the schedule of the team; hire additional coaching or training staff, or reassign current staff).
- Provide intensive training in physical education classes to upgrade athletic skills.
- Work with neighboring or similar institutions to develop competitive athletic opportunities, so that the institution's newly emerging women's athletic teams will have adequate intercollegiate competition.

The Selection of Sports and Levels of Competition

–Model Assessment Tool–

1. **Student enrollment**. Provide the following information regarding the number of female and male students enrolled at the institution.

	Women		Men		Total number
	Number	Percent of all students	Number	Percent of all students	
Full-time students					
Part-time students					
Total					

2. Student participation in athletics. Provide the following information regarding student participation in competitive athletic programs at the institution.

	Women		Men		Total	
	Number	Percent of female students	Number	Percent of male students	Number	Percent of all students
a. Participants in one or more intercollegiate sports						
b. Participants in one or more club sports ("competitive" and/or "contact" sports)						
c. Participants in one or more club sports ("noncompetitive," "noncontact")						
d. Participants in one or more intramural sports ("competitive" and/or "contact" sports)						
e. Participants in one or more intramural sports ("noncompetitive," "noncontact")						

3. **Intercollegiate sports.** Provide the following information regarding the selection of sports and the levels of competition available to women and men.

Name of sport (in alphabetical order) (Indicate "contact sports" with*.)	Is this a "contact" sport?	Annual budget	Describe expenses budget covers (e.g., coaches, equipment, trainers, scholarships, uniforms, etc.)	Number of participants in 1972	Current number of participants	Number of competitive events in 1972	Number of competitive events in current year	Year sport became intercollegiate sport	List any club sports in same area	List any intramural sports in same area	Briefly describe chronology of how sport evolved into intercollegiate sport (e.g., "club sport 1970-74," "intramural sport 1958-62")
a. **Women's intercollegiate sports**											
b. **Men's intercollegiate sports**											

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*To facilitate reading of many of the charts in this manual, the reader will need to turn the manual horizontally.

4. **Intramural sports.** List all intramural sports in alphabetical order and provide the following information regarding them.

Name of intramural sport	Is this a contact sport?	Annual budget	Describe expenses budget covers	Source of funds	Is selection based on competitive skill?	Is there a separate women's team?	Is there a separate men's team?	Is there a coeducational team?	Describe the nature and extent of any differences among teams, provide rationale, etc.

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5. **Club sports.** List all club sports in alphabetical order and provide the following information regarding them.

Name of club	Annual budget	Describe expenses budget covers	Source of funds	Number of female members	Number of male members	Is this a contact sport?	Is selection based on competitive skill?	Within the club, are teams single-sex or coeducational?	List any sex-based restrictions on membership or participation	Describe the nature and extent of any differences, provide rationale, etc.

IV. KEY ELEMENTS OF THE EQUAL OPPORTUNITY "LAUNDRY LIST"

EQUIPMENT, SUPPLIES, AND UNIFORMS

The Title IX regulation (in section 86.41(c)) lists "the provision of equipment and supplies" and "provision of. . .training facilities and services" as factors which the Director of HEW's Office for Civil Rights "will consider" in determining whether or not an institution is providing female and male athletes with overall equal opportunity.

Discussion

There have often been great differences in the equipment, supplies, and uniforms available for women's and men's competitive athletics, even for the same sports. In some instances the lack of equipment has had a chilling effect on the development of sports opportunities for women. In other instances, the lack of adequate equipment has increased the chance of injury or harm to female athletes.

Institutions may not discriminate on the basis of sex in providing necessary equipment, supplies, and uniforms. The Title IX regulation does not, however, require that an institution buy *exactly* the same equipment for women and men, or that it replace equipment for women's and men's teams at *exactly* the same time. Widely different standards for replacing equipment for women's and men's teams would, however, not be in line with Title IX. There are a great many dimensions by which nondiscrimination in equipment, supplies and uniforms can be measured, including the amount or number of pieces of equipment, supplies, or uniforms available; their quality; and the times during which they are available. For example, does the institution provide the women's basketball team with the same amount, quality, and availability of equipment, supplies and uniforms as it supplies to the male basketball team? Or, does the women's team have less equipment, equipment which is "handed down," or equipment which is not as readily available as the men's equipment (e.g., the equipment room is not available to women on the same basis as to men)?

Strategies for Equal Opportunity

If an institution finds sex bias in the provision of equipment, supplies, and/or uniforms, it should consider taking the following steps:

- Consolidate the process and procedures for purchasing equipment, supplies, and uniforms for both women's and men's teams by purchasing all such items from a central institutional fund. Care should be taken to assure that equal provision of these items to women and men is a major criterion in making purchasing decisions and that women, as well as men, participate in making these decisions. Note that such joint purchasing could both reduce costs by enabling the institution to purchase in bulk, and provide a checking mechanism to assure that different standards or criteria are not used for purchasing items for women and men.

- Pool existing equipment, supplies, and (where possible) uniforms for both women and men, and reassign these items to teams based on nondiscriminatory criteria.

- Reschedule the use of equipment, supplies, and/or uniforms currently used by teams, so that they are provided to women's and men's teams in a nondiscriminatory manner.

- Purchase new equipment, supplies, and/or uniforms to remedy disparities based on sex.
- Schedule women's and men's games and practices in tandem or concurrently where possible, so that equipment rooms, the staff dispensing supplies, etc. will be both equally available to both sexes and used most effectively. Note that care should be taken to assure that, in working towards this goal, the practice times and places of women's teams are not dictated by the men's games and practices; such an effect could discriminate against the women's teams.
- Reschedule or reassign personnel involved with dispensing equipment, supplies, uniforms, etc. so that these services and items are not more readily available to one sex.

Equipment, Supplies, and Uniforms

–Model Assessment Tool–

1. **Equipment Generally.*** Provide the following information regarding the provision of equipment (including training equipment, saunas, etc.) but excluding uniforms for teams. (Note: For tabulation purposes "equipment" includes items which last for more than one season.)

Name of sport	List all major (over $100) equipment provided by the institution. (Put * beside any handed down from another team.)	List all other equipment provided by the institution. (Put * beside any handed down from another team.)	Describe age and general condition of equipment (excellent, good, fair, poor).	Annual budget of sport to *replace* wornout equipment	Annual budget of sport to purchase *additional* equipment	Annual equipment cost per participant	Source of funds	List equipment participants must provide (e.g., tennis racket, tennis shoes).	Describe the nature and extent of any differences in amount, quality, availability, etc.
a. Women's teams									
b. Men's teams									

* List equipment (as well as uniforms and supplies) used by more than one team under item 4 (p. 34). This chart should list equipment which is used *only* by one team.

2. **Supplies.** Provide the following information regarding the provision of supplies (including training and medical supplies) for teams. (Note: For tabulation purposes, "supplies" are defined as items which are, at most, used for one season.)

Name of sport	List categories of supplies that institution provides (e.g., training supplies, medical supplies).	Annual cost of supplies for sport	Annual supply cost per participant	Source of funds	List categories of supplies that participants must provide.	Describe the nature and extent of any differences in amount, quality, availability, etc.
a. Supplies for women's teams						
b. Supplies for men's teams						

3. **Uniforms.** Provide the following information regarding the provision of team uniforms.

Name of sport	List all pieces of *game* uniforms or equipment worn by participants that institution provides (e.g., 2 jersies, 1 pr. pants, 3 prs. socks).	List all pieces of *practice* uniforms or equipment worn by participants that institution provides.	Describe age and general condition of this equipment (excellent, good, fair, poor).	Annual cost of outfitting team	Annual cost per participant	Source of funds	List game and practice equipment worn by participants that they have to provide, themselves.	Describe the nature and extent of any differences in amount, quality, availability, etc.
a. Uniforms for women's teams								
b. Uniforms for men's teams								

4. **Equipment, Uniforms and Supplies Used by More Than One Team.** Provide the following information regarding training or other equipment, uniforms, and supplies which are used by more than one team.

List these items (e.g., sauna, weight training equipment).	List women's teams which use equipment, etc.	List men's teams which use equipment, etc.	List mixed teams which use equipment, etc.	Purchase cost	Source of funds	Describe the nature and extent of any preferential or differential access that women and men have to this equipment, etc. (e.g., difference or fewer hours, convenience of location, etc.)

SCHEDULING OF GAME AND PRACTICE TIMES, SEASON LENGTH, AND NUMBER OF GAMES

The Title IX regulation (in section 86.41(c)) lists the "scheduling of games and practice times" as a factor which the Director of HEW's Office for Civil Rights "will consider" in determining whether or not an institution is providing female and male athletes with overall equal opportunity.

Discussion

The lack of opportunity for women's teams to practice and compete can, perhaps more than other factors, dry up burgeoning interest in athletic competition by women. Often, women's teams have been "allowed" to use game and practice facilities only when the men's teams did not want to use them. For example, women's teams have often been scheduled to practice or compete at inconvenient times or off-hours in order to leave the most desirable facilities and times free for competition by men. Moreover, male teams have sometimes been permitted to have longer practice sessions or seasons at the expense of practice or competitive opportunities for the women's teams. Additionally, the process for scheduling games, as well as the degree of lead time in scheduling games, has often been quite different for women's and men's teams.

Because practice and competitive opportunities often differ so markedly for women and men, it is necessary to gather sport-by-sport information on scheduling, season length, etc. to determine if the overall opportunities for women and men are nondiscriminatory.

Strategies for Equal Opportunity

In determining how to provide equal opportunity regarding scheduling, season length, etc. an institution might consider taking the following steps:

- Centralize the function of scheduling practice and competitive events and facilities in one institutional committee or office, taking care to assure that this committee is not discriminatory in its composition or orientation, and that nondiscrimination in scheduling is a clear mandate of the committee. Such a committee might either be composed of representatives from the women's and men's athletic programs, neutral third parties, or both.

- Reschedule events and facilities, so that women's teams and men's teams have equal opportunity for both the most "desirable" and "undesirable" times, etc. Note that "desirability" can depend on such factors as the day of the week, time of day, number of games, sequence of games, scheduling of "home" versus "away" games, conflicts with other institutional events, class scheduling, and the effects of the arrangements and timing on spectator interest.

- Schedule women's and men's games and practices in tandem or concurrently where possible. Note that care should be taken to assure that the practice times and places of women's teams are not dictated by the men's games and practices; such an effect could discriminate against the women's teams.

- Reschedule the availability of equipment, supplies, uniforms, equipment and training rooms, facilities, personnel, support services, etc. to assure nondiscrimination.

Scheduling of Game and Practice Times, Season Length, and Number of Games

–Model Assessment Tool–

1. **Scheduling generally.** Provide the following information regarding the scheduling of game and practice times, season length, and number of games.

Name of sport	Number of regular games played last year	Number of regular games planned for this year	Number of tournament and post-season games played last year	Day(s) of week on which regular games are played	Time of day during which regular games are played	Equipment room and/or training room open during practice and games	Date season practice begins	Dates of first and last regular games in season	Number of days of practice before first regular game in season	Dates of tournament and other post-season games	How far in advance are games scheduled?	What factors affect scheduling? (e.g., competitive level, distance, guarantees)	Describe the nature and extent of differences, provide rationale, etc.
a. Scheduling for women's teams													
b. Scheduling for men's teams													

2. **Scheduling of games.** Do any teams receive first priority or preferential treatment in the scheduling of games?

   ☐ Yes
   ☐ No

   If "yes," list these teams (indicating whether they are female or male teams) and describe the nature and extent of this preference.

3. **Scheduling of practice times.** Do any teams receive first priority or preferential treatment in the scheduling of practice times?

   ☐ Yes
   ☐ No

   If "yes," list these teams (indicating whether they are female or male teams) and describe the nature and extent of this preference.

4. **Guarantees.** Describe the influence of "guarantees" (i.e., guaranteed payment for playing a particular school in a particular sport in a particulr season) on the scheduling of games for the following types of teams, focusing on different treatment of women's and men's teams (e.g., lead time for scheduling, difficulty in altering schedules).

   a. Women's teams (Indicate any differences among teams.)

   b. Men's football

   c. Men's basketball

   d. Other men's teams (Indicate any differences among teams.)

TRAVEL AND PER DIEM ALLOWANCES

The Title IX regulation (in section 86.41(c)) lists "travel and per diem allowance" as one of the factors which the Director of HEW's Office for Civil Rights "will consider" in determining whether or not an institution is providing female and male athletes with overall equal opportunity.

Discussion

Often the amount of travel, the mode of travel, the amount of money allocated for food and lodging, and the source of these funds have been strikingly different for women's and men's teams. For example, women's basketball teams have sometimes had to provide their own transportation and pay for their own meals when traveling, while their male counterparts have traveled first-class across the country at the institution's expense.

In determining whether or not it is providing equal opportunity in this area, an institution must first examine the per diem funds being allocated for meals and lodging to various female and male teams. Then, it is necessary to examine the travel patterns of different teams (i.e., the distances traveled and the number of trips) to determine if differential scheduling decisions are resulting in the provision of unequal opportunity on the basis of sex.

Strategies for Equal Opportunity

In determining how best to provide equal opportunity in this area, an institution might consider the following options:

- Provide all athletes (both female and male) with identical per diem allowances, including the amounts allowed for lodging, meals, and other expenses.

- Schedule women's and men's games with the same institutions in tandem to the extent possible, so that travel costs are simultaneously shared and minimized. Note that care should be taken to assure that the competitive schedules of the women's teams are not dictated by the men's schedule; such an effect could discriminate against the women's teams.

- Institute procedures and specify a clear institutional policy to assure that college buses, cars, and other vehicles are equally available to women's and men's teams.

- To the extent possible, reschedule games of those teams which account for the majority of travel with schools which are closer.

Travel and Per Diem Allowances

–Model Assessment Tool–

1. Provide the following information regarding travel and per diem allowances for *women's teams and men's teams.*

Name of sport	Annual number of out-of-town trips	Names of cities/states traveled to	Indicate mode(s) of transportation (e.g., air coach, private car).	Annual number of nights away from institution	Dollar amount allowed for lodging per night per participant	Daily meal allowance per participant (in dollars)	Identify any other travel expenses.	Total annual cost of travel, lodging, other expenses	Annual cost per participant	Source of funds for these expenses
a. Women's teams										
b. Men's teams										

OPPORTUNITY OF STUDENTS TO RECEIVE COACHING

The Title IX regulation (in section 86.41(c)) lists the "opportunity to receive coaching" as one of the factors which the Director of HEW's Office for Civil Rights "will consider" in determining whether or not an institution is providing female and male athletes with overall equal opportunity.

Discussion

While Title IX does not require that an identical number of coaches be assigned to women's and men's teams regardless of the nature of the sports or the number of participants, it does require "equal opportunity." That is, decisions about such items as the number of coaches per team must be determined by objective standards, such as the nature of the sports or the number of participants, rather than by the sex of the participants in a particular athletic program.

Women athletes have historically had fewer coaches, coaches with less training, and fewer "coaching hours" than their counterparts on male teams. Also, women's teams have generally not been afforded the same level of "assistant coach" support as the men's teams.

Since programs for female students are managed primarily by women (and programs for male students are managed primarily by men), there is often a close relationship between the opportunity of female students to receive coaching and the opportunities afforded women coaches. However, the sex of a person cannot be used as a justification to deny students the opportunity to receive coaching.

Strategies for Equal Opportunity

An institution might consider the following options if it finds that the opportunities of female athletes to receive coaching are less than those of male students:

- Increase the number of coaches and/or assistant coaches available to the women's teams by hiring additional full- or part-time coaching staff.

- Increase the number of hours during which coaching is available to women's teams by rescheduling women's and men's coaches, by providing opportunities for women's and men's coaches to coach both sexes, by providing coaches of women's teams with additional released time, etc.

- Provide opportunities for parallel women's and men's teams (e.g., basketball) to share coaching time and expertise (e.g., joint clinics, practices, workshops, meetings).

- Sponsor the attendance of coaches of women's teams at workshops of clinics aimed at improving the level or caliber of coaching.

- Provide opportunities for women students to apprentice to either female or male coaches, thus affording them equal opportunity to develop coaching skills. Note that care should be taken to avoid apprenticing only male students to male coaches.

Opportunity of Students to Receive Coaching

–Model Assessment Tool–

Provide the following information regarding the opportunity of women's and men's teams to receive coaching.

Name of sport	Number of full-time coaches	Number of part-time coaches (including split appointments, excluding students)	Number of graduate assistants or students serving as coaches	Total FTE* coaches	Coach/student ratio (Number of students on team per FTE coach)
a. Women's teams					
b. Men's teams					

* FTE: Full-Time Equivalent

ACADEMIC TUTORING AND OTHER ACADEMIC SERVICES

The Title IX regulation (in section 86.41(c)) lists the "opportunity to receive. . .academic tutoring" and the "assignment and compensation of. . .tutors" as factors which the Director of HEW's Office for Civil Rights "will consider" in determining whether or not an institution is providing female and male athletes with overall equal opportunity.

Discussion

Some institutions provide academic tutoring and other services to assist the student athlete academically. In some institutions these services have traditionally been available to male athletes (generally football and/or basketball players), but not to female athletes. In some instances there has been sex discrimination against the tutors or persons providing these services.

If an institution finds that it is providing academic tutoring or other academic services preferentially to male athletes or teams, it must assess these differences in light of the overall "equal athletic opportunity" provisions of Title IX.

Strategies for Equal Opportunity

In determining how to provide equal opportunity in this area, an institution might consider the following options:

- Make these services available to *all* students, not just student athletes, on an equal basis and for the same fee for athletes and non-athletes alike.
- Make the availability of such services dependent on academic standing and ability, with female and male athletes eligible for these services on the same basis.
- Institute procedures and specify a clear institutional policy to assure that female and male athletes have equal access to these services.
- Cease providing special academic tutoring or other academic services differentially to athletes.

Academic Tutoring and Other Academic Services

—Model Assessment Tool—

1. **Academic tutoring.** Does the institution offer or provide any *special* academic tutoring to student athletes?

☐ Yes
☐ No – all athletes have same access as other students to academic tutoring services provided by the institution.
☐ No – institution does not offer academic tutoring services to any students.

If "yes," provide the following information:

	Women athletes	Male football players	Male basketball players	Other male athletes	Describe the nature and extent of any differences.
a. Number of students receiving tutoring					
b. Average number of hours of tutoring per student per term					
c. Cost per sport per year					
d. Source of funds (e.g., athletic department, individual students)					
e. Criteria for being eligible for tutoring					

2. **Other academic services.** Does the institution offer any other special academic services (e.g., remedial classes, study classes) to student athletes?

   ☐ Yes
   ☐ No – all athletes have the same access as other students to other academic services.
   ☐ No – institution does not offer other academic services to any students.

   If "yes," describe these other academic services and discuss the nature and extent of any differences between specific women's and men's teams.

FACILITIES: LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES

The Title IX regulation (in section 86.41(c)) lists the “provision of locker rooms, practice and competitive facilities” as one of the factors which the Director of HEW's Office for Civil Rights “will consider” in determining whether or not an institution is providing female and male athletes with overall equal opportunity.

Additionally, the regulation (in section 86.33) provides the following regarding “comparable facilities” for women and men:

> *A recipient [institution] may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.*

Discussion

Women athletes have often been treated as second-class citizens in terms of the facilities which the institution has provided to them. In the past it has been commonplace for the old gymnasium to be “retired” to the women when a new one became available to men and for women's teams to have fewer and less desirable competitive, practice, locker, and shower facilities. In some instances the lack of bathroom, shower, or locker facilities (or the lack of supervision in these facilities) has been used as a justification for denying women equal opportunity in athletics or in other areas. Although single-sex use of such facilities is permissible, it is not similarly permissible to use this lack of facilities as a justification for discrimination.

Under Title IX all facilities must generally be available without discrimination on the basis of sex. Locker rooms, toilets, showers, and other facilities available to women and men must be comparable. A close inspection of the facilities which women's and men's teams use, as well as a careful analysis of the access of each female and male team to various facilities and any related services, is necessary in order to assess whether or not there is discrimination in this area.

Strategies for Equal Opportunity

If an institution finds sex bias in the provision of, or access to, sports facilities, it might consider the following alternatives:

- Develop a uniform institutional policy regarding the use of all sports facilities, making certain that both sexes have equal access to these facilities and are equally involved in making decisions regarding the use and scheduling of these facilities.

- Implement specific procedures to carry out this policy. For example, form an institutional sports facilities policy committee, with equal representation from the women's and men's athletic programs, to coordinate the use and scheduling of these facilities. Alternatively, this sports facilities policy committee might be composed of, or include, persons who are not directly connected with the conduct of athletics. Whatever the composition of this committee, care should be taken to assure that it does not permit sex discriminatory access to facilities.

- Remodel facilities, and/or extend partitions, curtains, dividers, etc., so that facilities can be used by either or both sexes.

- Reschedule the use of facilities so that both women and men use facilities at prime (and non-prime) times.

- Arrange locker room and other supervisory schedules so that students are not denied equal athletic opportunity because of less supervision or the unavailability of supervision. Implement alternative supervisory methods (e.g., using other employees or graduate or other students as supervisors) in the interim if there is the possibility that supervisory difficulties would limit athletic opportunities on the basis of sex.

Facilities: Locker Room and Practice and Competitive Facilities

–Model Assessment Tool–

1. **Locker room facilities.** List the name/location of locker room facilities and describe these facilities in terms of the following:

Name/location of facility (indicate facilities handed down from another team by*.)	Year facility was built	General condition or adequacy of facility	How convenient is facility to main campus?	Original cost of facility	Source of funds for purchase/ maintenance	List women's teams which use facility, indicating which days and hours	List men's teams which use facility, indicating which days and hours	Describe the nature and extent of any preferential treatment or differential access to this facility (e.g., different hours); indicate which team(s) have preference, etc.)

2. **Locker and laundry benefits and services.** Indicate which of the following services or benefits are provided to female and male teams.

	Women's teams	Male football team	Male basketball team	Other men's teams	Describe the nature and extent of any differences; list teams, etc.
a. Laundry service					
b. Laundry facilities					
c. Hair drying facilities					
d. Towels provided to athletes					
e. Number of *permanent* lockers					
f. Number of temporary (i.e., used only during games and practices) lockers					
g. Availability of supervision					
h. List and describe any other different services or benefits.					

3. **Showers, toilets, etc.** Are there any differences in the number, quality, and availability of showers, toilets, etc. available to female and male athletes?

   ☐ Yes
   ☐ No

   If "yes," describe the nature and extent of these differences, indicating differences among female and male teams.

4. **Practice facilities.** Provide the following information regarding practice facilities (playing fields, gymnasiums, etc.) available to women and men.

Name/location of facility (Indicate facilities handed down from another team by *.)	Year facility was built/ developed	General condition or adequacy of facility	How convenient is facility to main campus?	How convenient is facility to locker room, showers, toilets, equipment room, training room, etc.?	Original cost of facility	Source of funds for purchase/ maintenance	List women's teams which use it, indicating which days and hours.	List men's teams which use it, indicating which days and hours.	Describe the nature and extent of any preferential treatment or differential access to this facility (e.g., different or fewer hours, fees, men's football has first priority, etc.).	Describe any unique or special characteristics or features of the facility (e.g., new gym floor, field protected when not in use, etc.).

5. **Competitive facilities.** Provide the following information regarding competitive facilities (stadiums, gymnasiums, playing fields, etc.) available to women and men.

Name/location of facility (Indicate facilities handed down from another team by *.)	Year facility was built/ developed	General condition or adequacy of facility	How convenient is facility to main campus?	How convenient is facility to locker room, showers, toilets, equipment room, training room, etc.?	Original cost of facility	Source of funds for purchase/ maintenance	List women's teams which use it, indicating which days and hours.	List men's teams which use it, indicating which days and hours.	Describe the nature and extent of any preferential treatment or differential access to this facility (e.g., different or fewer hours, fees, men's football has first priority, etc.).	Describe any unique or special characteristics or features of the facility (e.g., new gym floor, field protected when not in use, etc.).

6. **Spectator or other facilities.** Are there any other differences in facilities (including spectator facilities, training rooms and equipment rooms) provided to female and male teams?

☐ Yes
☐ No

If "yes," identify these facilities and describe the nature and extent of any differences, indicating differences between teams and the source of funds.

MEDICAL, HEALTH, AND TRAINING FACILITIES AND SERVICES

The Title IX regulation (in section 86.41(c)) lists "provision of medical and training facilities and services" as a factor which the Director of HEW's Office for Civil Rights "will consider" in determining whether or not an institution is providing female and male athletes with overall equal opportunity.

Additionally, the regulation (in section 86.39) makes the following general requirements regarding the provision of health and insurance benefits and services:

> *In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient [institution] shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate [the requirements of the regulation regarding nondiscrimination in employment]. This section shall not prohibit a recipient [institution] from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family services. However, any recipient [institution] which provides full coverage health service shall provide gynecological care.*

Discussion

Institutions sometimes provide special medical and/or training facilities and services to athletes. Often, these services have been preferentially available to certain male teams. For example, the institution's student health service may provide free medical care to the male (but not the female) basketball team or the male (but not the female) team may be provided with special health insurance.

It is necessary to look closely at all medical and health insurance, the availability of, and services provided by, trainers, services provided to athletes by the college health service, and medical requirements and provisions to determine if the institution is providing equal opportunity.

Strategies for Equal Opportunity

In determining how to provide equal opportunity in this area, an institution might consider the following options:

- Provide equal and comprehensive medical and insurance programs to all student athletes, regardless of sex.
- Develop a single standard for both female and male athletes regarding the type, nature, and extent of medical, health, and training services and facilities which the institution provides. Have representatives from the women's and men's athletic programs, or a neutral third party, formulate such standards and jointly purchase services, insurance, etc., taking care to assure that these standards do not have the effect of discriminating on the basis of sex.
- Pool training services and personnel where possible for both women's and men's teams.

Medical, Health, and Training Facilities and Services

–Model Assessment Tool–

1. **Medical and health insurance.** Do the medical and health insurance policies or coverage provided for female athletes differ *in any way* from those available to male athletes? ☐ Yes ☐ No If "yes," provide the following information.

	Female athletes	Male football players	Male basketball players	Other male athletes	Describe the nature and extent of any difference; list teams, etc.
a. Sports for which such coverage is provided					
b. Cost per participant					
c. Differences in total coverage deductible, etc.					
d. *Types of injuries* not covered by all policies					
e. *Services* not covered by all policies					
f. Sources of funds for this insurance (e.g., athletic budget, phys. ed. department, health service fees, student athletes individually)					
g. List any *other restrictions, privileges, or conditions* not covered by all policies (e.g., coverage at away game, duration of coverage, etc.).					

2. **Trainers.** Are there any trainers for either the female or the male teams? ☐ Yes ☐ No If "yes," provide the following information:

	Women's teams	Men's football	Men's basketball	Other men's teams	Describe or explain the nature and extent of any differences; list teams, etc.
a. Sports which have trainers					
b. Number of FTE trainers					
c. Services trainers provide					
d. Hours available					
e. Source of trainer's salary (e.g., athletic department, phys. ed. department)					

3. **College health service.** Does the college health service provide any extra or different services for female or male student athletes?
☐ Yes ☐ No If "yes," provide the following information.

	Female athletes	Male football players	Male basketball players	Other male athletes	Describe or explain the nature and extent of any differences; list teams, etc.
a. Extra or different examinations for athletes					
b. Medical treatment for athletic injuries					
c. Medical personnel at games or practices					
d. Health and training supplies or equipment					
e. List any other extra or different services for athletes.					
f. Source of funds (e.g., cost absorbed by health service, line item in men's athletic budget, etc.)					

4. **Medical requirements and other provisions.** Are there any other different medical requirements or provisions for women and men?
☐ Yes ☐ No If "yes," provide the following information.

	Women's teams	Men's football	Men's basketball	Other men's teams	Describe or explain the nature and extent of any differences; list teams, etc.
a. Teams that have a team physician					
b. Doctor's certificate or physical exam needed to participate?					
c. Ambulance or other medical assistance or resources available during games or practice?					
d. List any other different medical requirements or provisions.					
e. Source of funds for these requirements and provisions (e.g., athletic budget, health service fee, participants pay)					

HOUSING AND DINING FACILITIES AND SERVICES

The Title IX regulation (in section 86.41(c)) lists the "provision of housing and dining facilities and services" as a factor which the Director of HEW's Office for Civil Rights "will consider" in determining whether or not an institution is providing female and male athletes with overall equal opportunity.

The regulation (in sections 86.32(a) and (b)) also makes the following general requirements regarding housing:

> *(a) Generally. A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).*
>
> ***(b) Housing provided by recipient.***
>
> > *(1) A recipient may provide separate housing on the basis of sex.*
> >
> > *(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:*
> >
> > > *(i) Proportionate in quantity to the number of students of that sex applying for such housing; and*
> > >
> > > *(ii) Comparable in quality and cost to the student.*

Additionally, the regulation (in section 86.32(c)) spells out standards for nondiscrimination in "other housing" and (in section 86.33) specifically provides that, while certain facilities (toilets, locker rooms, showers) must be "comparable" for both sexes, they can be provided separately by sex.

Discussion

Some institutions have provided male athletes with special housing and/or dining services and facilities. In some instances living in "athletic dormitories" is a condition of receiving athletic scholarship assistance in certain sports and occasionally athletic departments actually operate or own housing or dining facilities specifically for athletes.

Such special athletic housing and dining facilities are generally unique to certain male sports. On most campuses female athletes use the same housing and dining facilities available to non-athlete female students.

An institution will need to examine a number of aspects of housing and dining services and facilities to determine if those available to female athletes are comparable to those available to male athletes. In order to determine this, an institution would need to determine first if *any* athletes receive any special, different, or preferential treatment regarding housing or dining services or facilities. If some or all athletes are treated differently in this regard, it is then necessary to evaluate and compare in some detail the services and facilities available to female and male athletes to determine how best to provide equal opportunity.

Strategies for Equal Opportunity

If an institution finds discrimination in housing and/or dining services or facilities, it might consider the following options:

- Make these facilities and services available to *all* students, not just student athletes, on a fee basis.
- Integrate these facilities into the pool of housing and dining facilities available generally at the institution.
- Reschedule or alternate the use of such facilities so that there is not discrimination on the basis of sex.
- Develop a uniform policy regarding the use of all such housing and dining facilities for both women and men, making certain that both sexes have equal access to these facilities and are equally involved in making decisions regarding their use. Implement procedures to carry out this policy.

Housing and Dining Facilities and Services

–Model Assessment Tool–

1. **Housing generally.** Are any housing facilities (e.g., dormitories, houses or parts of dormitories or houses) used exclusively or primarily by student athletes and/or do any student athletes receive any different/preferential treatment regarding housing? ☐ Yes ☐ No If "yes," provide the following information regarding these housing facilities.

Name of housing facility	Address/specific location or floor	Number of female athletes	Number of male football players	Number of male basketball players	Number of other male athletes	Year housing was built	General condition of facility	Are suites, single, or large rooms available?	List supportive services provided (e.g., laundry facilities or service, maid service, snack bars, etc.).	Dining facilities	Rules, curfews, visitation	Recreation space and facilities	Describe the nature and extent of these and any other differences or preferences; list teams, etc.

2. **Housing costs.** Is there a cost difference either to the institution or to the student in housing which is available to female and male student athletes?

☐ Yes
☐ No

If "yes," provide the following information.

a. Describe the nature and extent of the cost differences, indicating any differences among specific teams.

b. Indicate (by team) the source of funds for "picking up the tab" for these differences (e.g., additional costs absorbed by student room and board fees, additional costs included as a line item in men's football budget, or additional costs paid by student athletes.)

3. **Special dining halls and/or "training tables" generally.** Are any special or different dining services or facilities provided for student athletes? ☐ Yes ☐ No If "yes," attach copies of menus and provide the following information.

Name of dining hall (or dining hall in which "training tables" are located)	Address	Number of female athletes who use facility	Number of male football players who use facility	Number of male basketball players who use facility	Number of other male athletes who use facility	General quality of the food	Special menu? High protein food?	Quantity of food	List hours dining facility open.	Describe the nature and extent of these and other differences; list teams, etc.

4. **Dining costs.** Is there a cost difference to either the institution or to the student for any special dining services available to female and male athletes?
   - ☐ Yes
   - ☐ No

   If "yes," provide the following information.

   a. Describe the nature and extent of these cost differences, indicating any differences among specific teams.

   b. Indicate (by team) the source of funds for "picking up the tab" for these differences.

5. **Pre-Game Meals**. Are any special pre-game meals provided to any student athletes?
   - ☐ Yes
   - ☐ No

   If "yes," attach copies of menus and provide the following information.

   a. Describe the pre-game meals which each of the following teams receive: women's teams, men's football teams, men's basketball teams, other men's teams.

   b. Indicate (by team) the source of funds for "picking up the tab" for these meals.

6. **Other housing and dining services.** Are there any other special housing and/or dining services provided to some or all teams (e.g., reserved rooms in dormitories, refreshments during or after games)?
   - ☐ Yes
   - ☐ No

   If "yes," describe the nature and extent of these services, indicating differences between women's and men's teams and the source of funds.

PUBLICITY AND PUBLIC RELATIONS SERVICE

The Title IX regulation (in section 86.41(c)) lists "publicity" as one of the factors which the Director of HEW's Office for Civil Rights "will consider" in determining whether or not an institution is providing female and male athletes with overall equal opportunity.

The "Sports Memorandum" states that institutions "must not discriminate on the basis of sex in the provision of necessary equipment, supplies, facilities, and publicity for sports programs."

Discussion

Some institutions provide publicity and/or public relations services for athletic teams. Although these efforts and services have traditionally been available to male teams, but not to female teams, a number of institutions have begun to provide these services to female teams in the last few years.

Student publications should be reviewed during the evaluation process to determine if they provide nondiscriminatory coverage, keeping in mind relevant freedom of speech considerations. Some student newspapers operate under a code of ethics (which includes the obligation not to discriminate on the basis of sex in their overall publications), with a review and dismissal process for violations of the code.

Strategies for Equal Opportunity

In determining how to provide equal opportunity in this area, an institution might consider taking the following steps:

- Hold joint public relations events for women's and men's teams, rather than separate such events for women and men.
- Centralize or closely coordinate the publicity and/or public relations services for both women and men, taking care to assure that these services are provided in a nondiscriminatory manner and that women's and men's teams have equal access to these services.
- Increase publicity and/or public relations services to women's teams if they do not currently have the same access to these services as men's teams.
- Hire a sports information director for women, if currently only a sports information director for men is employed by the institution. Alternatively, the institution could redefine the job of the current sports information director to assure that he or she provides services equally to women's and men's teams.
- Provide additional mechanisms (e.g., regular meetings, joint committees) to facilitate the development and implementation of publicity and public relations services which provide equal opportunity to female and male teams.

Publicity and Public Relations Services

–Model Assessment Tool–

1. **Publicity and public relations services.** Describe any different publicity or public relations services which the institution provides to any team in terms of the following:

	Services to women's teams	Services to men's football	Services to men's basketball	Services to other men's teams	What office/person performs these services? (Indicate differences among teams, if any.)	Source of funds	Describe the nature and extent of any differences; list teams, etc.
a. Press meetings or luncheons							
b. Press books and media brochures (attach copies)							
c. Publish press releases (attach copies)							
d. Duplicating or photocopying services for these materials							
e. Telephone in scores after games							
f. Availability of statistician for games, etc.							
g. Writer and/or photographer available to teams							
h. Stories or articles in university papers, magazines, etc. (attach copies)							
i. List any other publicity or public relations services which the institution provides to athletic teams							

2. **Sports information director.** Does the institution have a sports information director (or directors)? ☐ Yes ☐ No
If "yes," describe this position (these positions) and these services in terms of the following:

	Services to women's teams	Services to men's football	Services to men's basketball	Services to other men's teams	Describe the nature and extent of any differences; list sports or teams, etc.
a. Number of FTE people employed to serve teams					
b. Sex of these persons					
c. Annual salary of these persons					
d. Source of this salary					
e. Office out of which these persons work (e.g., athletic department, university publications office)					
f. Indicate the services they provide to teams (e.g., press releases, press luncheons and meetings, public press books and media brochures)					

3. **Press box.** Do female and male reporters have equal access to the press box for all athletic events?
   ☐ Yes
   ☐ No

   If "no," describe differences and indicate the rationale for these differences.

4. **Coverage of athletics in the student newspaper.** Describe the nature and extent of coverage of athletic events by the student paper for the following teams. (Attach copies of coverage of athletics.)

   a. Women's teams (Indicate which teams are covered.)

   b. Men's football

   c. Men's basketball

   d. Other men's teams (Indicate which teams are covered.)

V. EMPLOYMENT: ASSIGNMENT AND COMPENSATION OF ADMINISTRATORS, COACHES, OFFICIALS, AND OTHER ATHLETIC PERSONNEL

The Title IX regulation (in section 86.41(c)) lists "assignment and compensation of coaches" as one of the factors which the Director of HEW's Office for Civil Rights "will consider" in determining whether or not an institution is providing female and male athletes with overall equal opportunity.

Moreover, Title IX (as well as a number of other Federal and State provisions) prohibits *any* employment discrimination on the basis of sex in covered institutions. The regulation (in sections 86.38 and 86.51 through 86.61) describes in some detail the specific prohibitions against sex discrimination in student employment, employment criteria, recruitment, compensation, job classification and structure, fringe benefits, marital and parental status, the effect of State or local laws or requirements, advertising, and pre-employment inquiries. (Additionally, the regulation allows sex as a bona fide occupational qualification for a few occupations.) The 3-year "adjustment period" that applies to athletic programs affecting students does not apply to *employment* discrimination in these programs.

Additionally, Executive Order 11246 prohibits employment discrimination on the basis of sex, race, color, religion, or national origin by Federal contractors. Title VII of the 1964 Civil Rights Act prohibits all employers, including those which do not have Federal monies, from employment discrimination on the basis of sex, race, color, religion, or national origin. The Equal Pay Act of 1963 prohibits all employers from discriminating on the basis of sex in salaries and other compensation.

Discussion

Examples of discriminatory treatment of women in employment are common and complex; different salaries for women and men coaches and officials, different contractual agreements, different opportunities, for advancement. And, although the often different structures of women's and men's athletics make comparisons difficult, the existence of different structures does not diminish the institution's obligation not to discriminate.

It has not been uncommon for women coaches, administrators, officials, and other personnel employed by the women's athletic department to receive less pay or fewer benefits than their male counterparts. Although such discriminatory practices have clearly violated Federal (and often State) law, they have not been vigorously challenged until recently. The main criteria for evaluating whether there is equal pay for equal work are the amount of skill, effort, and responsibility involved in the job. There have been decisions under the Equal Pay Act in which the courts have, for equal pay purposes, compared the salaries of female and male coaches in similar, as well as identical, jobs (e.g., the salary of a female softball coach has been compared to that of a male baseball coach). Moreover, if male coaches as a group are consistently paid at a higher rate than female coaches as a group, the question of a pattern of discrimination arises.

Oftentimes the conditions of employment have been quite different for persons (generally women) hired to coach women and persons (generally men) hired to coach men. For example, the coach of the women's basketball team might also be required to coach tennis and/or teach in the physical education department, while the coach of the men's basketball team devotes full time to coaching basketball. Or, coaches of men's teams might be able to negotiate longer, better, or otherwise different contracts than coaches of women's teams. Or, the opportunities of women and men to gain seniority or tenure, or to be promoted to administrative positions, might differ. In part these differences reflect the different structures under which women's and men's programs often operate.

Discrimination against women athletic administrators and coaches has, perhaps more strikingly than any other form of employment discrimination, a dual impact: in addition to discriminating against the women employee, the woman *student* suffers as well because college athletics are often segregated by sex. For example, if the coach of the women's basketball team also has to coach field hockey and teach two classes, she cannot be expected to provide the same quality of coaching to her female students and team members that the coach of the men's basketball team (who coaches basketball full time and has three assistant coaches) is able to provide to his male team members.

In the past many athletic programs have followed a policy of hiring only women to coach women and only men to coach men. However, it is becoming increasingly clear that such a distinction is not permissible under the legislation prohibiting employment discrimination, including Title IX.

Although Title VII of the 1964 Civil Rights Act permits employers to limit a job to one sex if they can show that sex is a "bona fide occupational qualification" (bfoq), the courts have interpreted this exemption very narrowly. For example, acceptable bfoq's have included "lingerie fitter" and "restroom attendant" provided the attendant is in the restroom while it is in use. It is doubtful that sex could ever be justified as an acceptable "bfoq" for coaching or training jobs, since student or other assistance can be secured for locker room supervision. While the rights of privacy of both employees and students would be protected (i.e., women and men are not required to use the same bathroom or locker room at the same time), the lack of facilities cannot be used as a justification for excluding one sex or the other.

A word of caution is in order regarding the criteria which an institution uses for hiring coaches. Because of past discrimination and limited opportunities, women often have not had the same opportunities as men to amass the experience or credentials which institutions often use to evaluate coaching proficiency. For example, a number of seemingly neutral criteria (such as playing on a championship intercollegiate team or being recommended by a prominent football coach), which may be predictive of coaching success for men, are not likewise predictive of coaching success for women (since there have been fewer championship events for women and since football coaches are unlikely to know the women athletes on campus). Similarly, hiring "overqualified" candidates (e.g., candidates who have 20 years of coaching experience) may lead the institution to hire only male coaches, since there have been few coaching jobs for women until recently. Indeed, if such criteria were used to make hiring decisions, they would undoubtedly exclude most women, including many superb women coaches, from consideration for the job. Using criteria which have a disproportionate impact on women which cannot be justified by business necessity might well be ruled discriminatory under the various laws prohibiting sex discrimination in employment.

In order to avoid using criteria which disproportionately exclude women, institutions should look for alternative measures which are predictive of coaching ability for women, as well as men.

In order to identify and remedy such discrimination, institutions must thoroughly review the athletic employment situation on their campus for women and men and, where necessary, make adjustments to assure nondiscrimination. Many institutions will undoubtedly have already made such comparisons in developing an affirmative action plan under Executive Order 11246, or in bringing their institution into compliance with the nondiscrimination provisions of the Equal Pay Act of 1963 and Title VII of the 1964 Civil Rights Act.

An institution must remedy any past patterns of employment discrimination it identifies. Appropriate remedies could include raising the salaries of women to the level of men in comparable jobs, equalizing fringe benefits or altering job ladders so that women are not disadvantaged. (Note that lowering, rather than raising, salaries to remedy discrimination is not acceptable under the law.) Even if the institution can demonstrate overall "equal athletic opportunity" for students, it cannot legally continue employment discrimination. The 3-year "adjustment period" that applies to athletic programs affecting students does not apply to *employment* discrimination in these programs.

Employment: Assignment and Compensation of Administrators, Coaches, Officials, and Other Athletic Personnel

–Model Assessment Tool–

1. **Distribution and compensation of administrators and coaches.** Provide the following information regarding administrators and coaches (including assistant coaches) hired to support the conduct of intercollegiate athletics.

List each administrator or coach employed to support intercollegiate athletics. (List in descending order from highest to lowest salary.)	Total annual salary	Annual salary for coaching (Indicate if released time, not salary.)	Source of salary (e.g., line item in athletic budget, phys. ed. department, booster club)	Sex (F/M)	Job title	Type of appointment (e.g., dual appointment with phys. ed. department, full-time coach)	Percent FTE in women's athletics	Percent FTE in men's football	Percent FTE in men's basketball	Percent FTE in other men's teams	Sports which this person coaches or administers	Brief description of duties, including teaching load	Describe nature and extent of differences; provide rationale, etc.

2. **Employment standards and process for administrators and coaches.** Are there *any* differences in the hiring and employment processes or standards for administrators and coaches for the women's and men's athletic programs? ☐ Yes ☐ No If "yes," describe any differences in terms of the following:

	Women's teams	Men's football	Men's basketball	Other men's teams	Describe nature and extent of differences; list teams, etc.
a. Advertising or recruitment process or standards					
b. Contractual agreements (attach copies of contracts)					
c. Form of compensation for coaching (e.g., released time, salary)					
d. Fringe benefits					
e. Hiring criteria					
f. Length or term of appointments					
g. Opportunities for job mobility or promotion					
h. Opportunities for tenure or seniority					
i. Salary range					
j. Screening process (Who screens? What steps?)					
k. List and describe any other differences					

3. **Distribution and compensation of other personnel.** Provide the following information regarding all other persons (including trainers, clerical staff and other support staff) hired to support the conduct of intercollegiate athletics.

List each other person hired to support intercollegiate athletics. (List in descending order from highest to lowest salary.)	Total annual salary	Annual salary for support of intercollegiate athletics (Indicate if released time, not salary.)	Source of salary	Sex (F/M)	Job title	Type of appointment	Percent FTE in women's athletics	Percent FTE in men's football	Percent FTE in women's basketball	Percent FTE in other men's teams	Sports which this person supports	Brief description of duties	Describe nature and extent of differences; provide rationale, etc.

4. **Employment standards and process for other personnel.** Are there *any* differences in the hiring and employment processes or standards for other persons (including trainers, clerical and other support staff) hired to support the conduct of intercollegiate athletics?
☐ Yes ☐ No If "yes," describe any differences in terms of the following:

	Women's teams	Men's football	Men's basketball	Other men's teams	Describe nature and extent of differences; list teams, etc.
a. Advertising or recruitment process or standards					
b. Contractual agreements (attach copies of contracts)					
c. Form of compensation for coaching (e.g., released time, salary)					
d. Fringe benefits					
e. Hiring criteria					
f. Length or term of appointments					
g. Opportunities for job mobility or promotion					
h. Opportunities for tenure or seniority					
i. Salary range					
j. Screening process (Who screens? What steps?)					
k. List and describe any other differences					

5. **Officials.** Provide the following information regarding officials at games for women's teams and for men's teams.

Name of sport	Sex of officials (F/M)	Number of officials per game	Number of games per year	Amount of salary/payment to officials per game	Source of salary/payment to officials (e.g., line item in athletic budget, no payment to officials)	If officials must be certified, indicate by whom or what organization.	List and describe any other areas in which there are differences between officials at women's and men's games.
a. Officials for women's teams							
b. Officials for men's teams							

6. **Student employment.** Do either the women's or men's athletic programs employ *students* as assistants, trainers, tutors, etc.? ☐ Yes ☐ No If "yes," describe any differences in terms of the following:

	Women's program	Men's program	Describe nature and extent of differences; list teams, etc.
a. Number of female students			
b. Number of male students			
c. Salary range			
d. Source of salary			
e. List and describe any other differences in either hiring, assignment, the form or amount of compensation, treatment, etc.			

VI. FINANCIAL AID TO ATHLETES: ATHLETIC SCHOLARSHIPS

The Title IX regulation (in section 86.37(c)) sets the following standards for judging Title IX compliance with regard to athletic scholarships:

> *(1) To the extent that a recipient [institution] awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.*
>
> *(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and [the athletic section of the Title IX regulation].*

The "Sports Memorandum" provides additional guidance regarding the award of financial aid to athletes:

> *As part of the self-evaluation and planning process [required by Title IX], educational institutions must also ensure that equal opportunity exists in the provision of athletic scholarships. . . .*
>
> *Following the approach of permitting separate teams, [the Title IX] regulation permits the overall allocation of athletic scholarships on the basis of sex. No such separate treatment is permitted for non-athletic scholarships.*
>
> *The thrust of the athletic scholarship section is the concept of reasonableness, not strict proportionality in the allocation of scholarships. The degree of interest and participation of male and female students in athletics is the critical factor in determining whether the allocation of athletic scholarships conforms to the requirements of the regulation.*
>
> *Neither quotas nor fixed percentages of any type are required under the regulation. Rather, the institution is required to take a reasonable approach in its award of athletic scholarships, considering the participation and relative interests and athletic proficiency of its students of both sexes.*
>
> *Institutions should assess whether male and female athletes in sports at comparable levels of competition are afforded approximately the same opportunities to obtain scholarships. Where the sports offered or the levels of competition differ for male and female students, the institution should assess its athletic scholarship program to determine whether overall opportunities to receive athletic scholarships are roughly proportionate to the number of students of each sex participating in intercollegiate athletics.*
>
> *If an educational institution decides not to make an overall proportionate allocation of athletic scholarships on the basis of sex, and thus, decides to award such scholarships by other means such as applying general standards to applicants of both sexes, institutions should determine whether the standards used to award scholarships are neutral, i.e., based on criteria which do not inherently disadvantage members of either sex. There are a number of "neutral"*

> *standards which might be used including financial need, athletic proficiency or a combination of both. For example, an institution may wish to award its athletic scholarships to all applicants on the basis of need after a determination of a certain level of athletic proficiency. This would be permissible even if it results in a pattern of award which differs from the relative levels of interests or participation of men and women students so long as the initial determination of athletic proficiency is based on neutral standards. However, if such standards are not neutral in substance or in application then different standards would have to be developed and the use of the discriminatory standard discontinued. For example, when "ability" is used as a basis for scholarship award and the range of ability in a particular sport, at the time, differs widely between the sexes, separate norms must be developed for each sex.*

Additionally, regarding the time frame for complying with the Title IX provisions regarding athletic scholarships, the "Sports Memorandum" states:

> *Because of the integral relationship of the provision relating to athletic scholarships and the provision relating to the operation of athletic programs, the adjustment periods for both are the same [i.e., until July 21, 1978].*

Discussion

Many institutions provide financial assistance of one kind or another to student athletes. In virtually every instance where such financial aid has been available, men have had a greater opportunity than women to receive it. Although the number of institutions offering athletic scholarships to women has increased markedly since the 1972 passage of Title IX, female athletes still do not have equal access to this kind of aid on most campuses.

There has generally been a double standard for awarding athletic financial aid. For example, while athletic scholarships have often been praised for providing "disadvantaged" male athletes with the opportunity to participate in the college experience, "disadvantaged" *female* athletes have not had similar opportunities. And, in some instances there has been a "triple standard": male football and basketball players were treated by one standard, other male athletes by another standard, and women athletes by yet another standard.

The Title IX regulation does not require institutions to duplicate their men's athletic financial aid program for women. Nor does it deny individual institutions the flexibility to develop their own women's and men's athletic programs, as long as the institution's total program ensures both women and men an equal opportunity to compete in athletics in a meaningful way. Title IX compliance regarding athletic financial aid is determined by the overall "reasonableness" of the financial aid available to participants in the women's and men's athletic programs, rather than by the specific aid provided to each student or in each sport.

Hence, the regulation does not bar somewhat different forms or amounts of financial aid awards to individual female and male athletes, as long as the totality of this aid provides "reasonable opportunities to members of each sex in proportion to the number of students of each sex participating" in intercollegiate athletics. The criteria for the award of athletic scholarships may legitimately vary for women's and men's athletics, as may the sports in which scholarships are awarded, so long as the *overall effect* is not discriminatory. The regulation may also permit an institution to offer separate athletic scholarships for separate female and male teams, as long as the institution assures overall equal opportunity for both sexes (i.e., "reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating" in intercollegiate athletics).

The regulation does not address the desirability of providing financial aid to athletes per se. However, many institutions will undoubtedly find that their efforts to reconcile the often widely different practices and philosophies of their women's and men's athletic departments will lead them to reassess the overall role of athletic scholarships in their institution. As a result of this type of assessment, some institutions are substituting scholarships based on "need" for traditional "athletic ability" scholarships, pointing out that basing financial aid on need is one way to assure nondiscrimination. Need-based scholarships for both women and men have also been advocated as a way to reduce the cost of extensive intercollegiate athletic programs.

The pros and cons of providing financial aid to athletes generally have been and promise to continue to be a hotly debated issue. This discussion can be expected to intensify as the economic situation puts additional strains on the financial resources of institutions, as tuition and other student costs rise, and as efforts aimed at advancing "athletes' rights" increase. Although the Title IX regulation does not address these specific administrative or philosophical issues, the law requires that institutions take care to make decisions which do not differentially affect women and men.

The administration of financial aid to student athletes varies enormously from institution to institution. For example, at some institutions the men's athletic department may have total control over the awarding of athletic financial aid to men, while financial aid to women athletics is handled through the college financial aid office.

Similarly, the sources of funds for athletic financial aid vary enormously. In some colleges this aid is a part of the general institutional scholarship fund and does not appear in the athletic budget at all; in some colleges it is a line item in the athletic department budget; in others all or part of this aid comes from a "booster club" or affiliated "athletic corporation"; and in still other institutions this aid comes from several sources simultaneously. While differences in the source of funds for athletic scholarships may make the analysis of equal opportunity complex in some instances, the source of financing is not relevant in determining an institution's coverage by, or compliance with, Title IX.

In evaluating whether it is providing "reasonable opportunities" for athletic scholarships "in proportion to the number of students of each sex" participating in intercollegiate athletics, institutions will generally find that the complexity of the necessary evaluation will reflect the complexity of its athletic scholarship award programs. That is, institutions with a comprehensive athletic scholarship program will find it necessary to conduct a much more extensive analysis than institutions with small programs.

Many institutions award the majority of all athletic financial aid in two sports, male football and male basketball. These institutions will therefore probably find it beneficial to pay special attention to the effect of these awards on scholarship opportunities generally. However, it should be noted that, in assessing Title IX compliance in this area, (male) basketball and football scholarships are not treated differently from financial aid to other male athletes. Similarly, for financial aid purposes, contact and noncontact sports cannot be treated separately, nor can athletic aid in the so-called "revenue producing" sports be evaluated separately from athletic aid in "non-revenue producing" sports. In evaluating whether or not it is providing equal athletic scholarship opportunity under Title IX, an institution must compare *all* such aid to women with *all* such aid to men.

In determining or evaluating the basis on which to award financial aid to students, institutions should also pay special attention to HEW's caution in the "Sports Memorandum" that, if standards for the award of this aid are not "neutral" in both "substance" and "application," the institution must use different (and nondiscriminatory) standards for the award of aid. In measuring "athletic ability" or "athletic proficiency," institutions must adopt separate norms or measures for women and men if the application of a single standard would "disadvantage" women.

Strategies for Equal Opportunity

If an institution finds that it is not providing "reasonable opportunities" for women and men to receive athletic financial aid "in proportion to the number of students of each sex participating" in intercollegiate athletics, it might consider taking the following steps:

- Award all financial aid, including financial aid for student athletes, on the basis of financial need.

- Raise, allocate, or appropriate additional funds in order to increase the number of financial aid awards available to female athletes.

- Evaluate the criteria for the award of financial assistance to female and male athletes and, if overall discrimination is found, revise the criteria to eliminate this discrimination. Note that, if applying a single measure of "athletic ability" or "athletic proficiency" would "disadvantage" women, separate norms or measures for women and men must be developed.

- Alter or revise the form or amount of financial assistance provided to women and men to ensure that women and men both have reasonable opportunities in proportion to their numbers participating on intercollegiate teams.

- Have the women's and men's athletic programs jointly administer the award of financial aid to *all* student athletes. Overall nondiscrimination in these awards should be a clear mandate of this committee and care should be taken to assure that women and men participate equally in making decisions regarding the award of aid.

- Charge the institution's financial aid office with the responsibility for administering the award of financial aid for both female and male student athletes in a nondiscriminatory manner. If athletic ability is a criteria for the award of this aid, a nondiscriminatory system for evaluating this ability should be developed in consultation with the women's and men's athletic departments.

- Reduce the number or size of scholarships in those male sports which account for the majority of the aid to male athletes.

- Cease providing special financial aid to athletes.

Financial Aid to Athletes: Athletic Scholarships

–Model Assessment Tool–

1. Athletes receiving aid. Provide the following information regarding the number of students receiving financial assistance, the average dollar value of this assistance, and the form of the aid. (Note: These totals should include all types of in-kind aid, including tuition waivers. Include *all* awards to student athletes, even if the aid is not based on athletic ability.)

a. Female athletes receiving aid

Basis for receiving aid*	Number of students receiving aid	Lowest and highest awards to athletes (in dollars)	Average dollar value of award (including in-kind loans, etc.)	Form or type of award (e.g., direct grant, work/study, student loan)	Source of funds**	Describe nature and extent of differences; list teams; indicate criteria for determining form or type of award; identify any differences in terms of conditions, etc.
Aid based solely on need						
Aid based solely or primarily on athletic ability (i.e., over 70 percent of aid based on athletic ability)						
Aid based partially (but not solely or primarily) on athletic ability (i.e., less than 30 percent of aid based on athletic ability)						
Aid based on other criteria (Describe criteria)						

* If necessary for tabulation, list each individual's name under each of these bases.

** Source of funds might include general institutional scholarship fund, athletic scholarships as a line item in the athletic department's budget, institutional work/study, funds from athletic booster club or corporation, aid earmarked for "x" sport by a will or trust, student loan, etc.

1. **Athletes receiving aid.** Provide the following information regarding the number of students receiving financial assistance, the average dollar value of this assistance, and the form of the aid. (Note: These totals should include all types of in-kind aid, including tuition waivers. Include *all* awards to student athletes, even if the aid is not based on athletic ability.)

b. Male football players receiving aid

Basis for receiving aid*	Number of students receiving aid	Lowest and highest awards to athletes (in dollars)	Average dollar value of award (including in-kind loans, etc.)	Form or type of award (e.g., direct grant, work/study, student loan)	Source of funds**	Describe nature and extent of differences; list teams; indicate criteria for determining form or type of award; identify any differences in terms of conditions, etc.
Aid based solely on need						
Aid based solely or primarily on athletic ability (i.e., over 70 percent of aid based on athletic ability)						
Aid based partially (but not solely or primarily) on athletic ability (i.e., less than 30 percent of aid based on athletic ability)						
Aid based on other criteria (Describe criteria)						

* If necessary for tabulation, list each individual's name under each of these bases.

** Source of funds might include general institutional scholarship fund, athletic scholarships as a line item in the athletic department's budget, institutional work/study, funds from athletic booster club or corporation, aid earmarked for "x" sport by a will or trust, student loan, etc.

1. **Athletes receiving aid.** Provide the following information regarding the number of students receiving financial assistance, the average dollar value of this assistance, and the form of the aid. (Note: These totals should include all types of in-kind aid, including tuition waivers. Include *all* awards to student athletes, even if the aid is not based on athletic ability.)

c. **Male basketball players receiving aid**

Basis for receiving aid*	Number of students receiving aid	Lowest and highest awards to athletes (in dollars)	Average dollar value of award (including in-kind loans, etc.)	Form or type of award (e.g., direct grant, work/study, student loan)	Source of funds**	Describe nature and extent of differences; list teams; indicate criteria for determining form or type of award; identify any differences in terms of conditions, etc.
Aid based solely on need						
Aid based solely or primarily on athletic ability (i.e., over 70 percent of aid based on athletic ability)						
Aid based partially (but not solely or primarily) on athletic ability (i.e., less than 30 percent of aid based on athletic ability)						
Aid based on other criteria (Describe criteria)						

* If necessary for tabulation, list each individual's name under each of these bases.

** Source of funds might include general institutional scholarship fund, athletic scholarships as a line item in the athletic department's budget, institutional work/study, funds from athletic booster club or corporation, aid earmarked for "x" sport by a will or trust, student loan, etc.

1. **Athletes receiving aid.** Provide the following information regarding the number of students receiving financial assistance, the average dollar value of this assistance, and the form of the aid. (Note: These totals should include all types of in-kind aid, including tuition waivers. Include *all* awards to student athletes, even if the aid is not based on athletic ability.)

d. Other male athletes receiving aid

Basis for receiving aid*	Number of students receiving aid	Lowest and highest awards to athletes (in dollars)	Average dollar value of award (including in-kind loans, etc.)	Form or type of award (e.g., direct grant, work/study, student loan)	Source of funds**	Describe nature and extent of differences; list teams; indicate criteria for determining form or type of award; identify any differences in terms of conditions, etc.
Aid based solely on need						
Aid based solely or primarily on athletic ability (i.e., over 70 percent of aid based on athletic ability)						
Aid based partially (but not solely or primarily) on athletic ability (i.e., less than 30 percent of aid based on athletic ability)						
Aid based on other criteria (Describe criteria)						

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* If necessary for tabulation, list each individual's name under each of these bases.

** Source of funds might include general institutional scholarship fund, athletic scholarships as a line item in the athletic department's budget, institutional work/study, funds from

2. Proportion of athletes receiving financial aid. Provide the following information regarding the number and percent of student athletes receiving financial aid.

Name of sport	Number of students participating in this sport	Number of students receiving aid based in whole or part on athletic ability	Percent of students on team receiving "athletic" assistance	Number of students receiving aid based *totally* on nonathletic criteria	Percent of students on team receiving "nonathletic" assistance	Describe nature and extent of differences, etc.
a. Proportion of female athletes receiving financial aid						
b. Proportion of male athletes receiving financial aid						

3. **Process and criteria for the award of aid.** **Provide the following information regarding the process and criteria for the award of financial aid.**

	Female athletes	Male football players	Male basketball players	Other male athletes	Describe the nature and extent of differences; describe the process; point out differences among teams or types of students, etc.
a. What factors determine the amount of aid?					
b. What factors determine the form of aid?					
c. Who makes the decision *whether or not the student receives assistance?* (e.g., financial aid office, athletic director)					
d. Who makes the decision regarding the *amount and form of assistance?*					
e. If "need" is a factor in determining aid, describe how need is computed and indicate average percent of need covered by aid.					
f. If "athletic ability" is a factor in determining aid, describe how it is evaluated.					
g. If academic ability is a factor in determining aid, give the grade/test score cutoff points and indicate under what circumstances "exceptions" are made. If athletes ever receive priority or preference for "nonathletic" aid, describe the circumstances and extent of this practice.					
i. Give deadlines for submitting application for aid/notification of award.					

3. Process and criteria for the award of aid. (continued)

	Female athletes	Male football players	Male basketball players	Other male athletes	Describe the nature and extent of differences; describe the process; point out differences among teams or types of students, etc.
j. What forms must be submitted to apply for aid? (Attach copies if they are not the same for all categories.)					
k. If these forms are evaluated differently, describe how.					
l. Is aid renewable for 4 years? Describe differences.					
m. Does student receive a written contract stating amount, duration, conditions, terms of aid? (If yes, attach copy.)					
n. Under what conditions is aid terminated or cut back? (e.g., grades drop, player leaves team, player injured)					
o. What constraints or nonathletic services are required or expected of aid recipients? (e.g., live in dorm, assist in fund raising)					
p. What role does "in state" or "out of state" residency play?					
q. List and describe any other ways in which the process or criteria for awarding aid differs by sex or team.					

VII. OTHER EQUAL OPPORTUNITY ISSUES

RECRUITING STUDENT ATHLETES

Title IX links the recruitment process to admission results. Hence, those institutions which are exempt from the Title IX requirement not to discriminate in admissions (such as *private, but not public,* undergraduate colleges) are similarly exempt from Title IX's provision regarding nondiscriminatory recruitment.

The Title IX regulation does not specifically address either recruiting students for athletic teams or granting preferential admission to student athletes. Regarding the recruitment of students in general, however, the regulation (in section 86.23) states the following:

> *(a)* ***Nondiscriminatory recruitment.*** *A recipient [institution] to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient [institution] may be required to undertake additional recruitment efforts for one sex as remedial action. . .and may choose to undertake such efforts as affirmative action. . . .*
>
> *(b)* ***Recruitment at certain institutions.*** *A recipient [institution] to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of [the Title IX regulation].*

Similarly, regarding admission, the Title IX regulation (in section 86.21(a)) generally prohibits sex discrimination in admission to those institutions covered by the admissions provisions of Title IX:

> ***General.*** *No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission by any recipient [institution] to which [Title IX] applies, except [in the case of those institutions which are exempt from Title IX's admission provisions].*

Specifically, the regulation (in section 86.21(b)(1)) states that, in determining "whether a person satisfies any policy or criterion for admission, or in making any offer of admission," a covered institution cannot:

> *(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;*
>
> *(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or*
>
> *(iii) Otherwise treat one individual differently from another on the basis of sex.*

Also, the regulation (in section 86.21(b)) addresses the issue of admissions tests or criteria which have a disproportionately adverse effect on one sex:

> *A recipient [institution] shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.*

The regulation (in section 86.21(c)) also prohibits discrimination in admissions because of marital or parental status.

The "Sports Memorandum" additionally states that "educational institutions are not required to duplicate their men's programs for women."

Discussion

Recruiting student athletes has, by and large, been a phenomenon of certain male intercollegiate sports. Indeed, the major association governing the conduct of women's intercollegiate athletics, the Association for Intercollegiate Athletics for Women, currently prohibits many specific recruiting practices which are permitted by the associations governing the conduct of men's intercollegiate athletics.

The Title IX regulation allows institutions (including those governed by the admissions provisions of Title IX) some flexibility in the specific recruitment process and procedures they use, so long as the overall effect of recruitment efforts on the admission of women and men is not discriminatory. If however, the recruitment process leads to discriminatory admissions or if any admissions criteria (including athletic ability) has a "disproportionately adverse effect" on the basis of sex, then covered institutions would need to revise the recruitment process and/or the admissions criteria.

Strategies for Equal Opportunity

If an institution finds that it is recruiting male athletes more vigorously than female athletes, it might consider taking the following steps:

- Coordinate the recruitment of female and male athletes so that travel expenses and other resources might be more equitably shared.
- Increase the recruitment effort for women athletes.
- Decrease the recruitment effort for male athletes.

Recruiting Student Athletes

—Model Assessment Tool—

1. **Recruitment.** Does the institution *recruit* students for any sport? ☐ Yes ☐ No If "yes," provide the following information regarding the nature and extent of the recruitment effort.

	Female athletes	Male football players	Male basketball players	Other male athletes	Describe the nature and extent of any differences; spell out differences among teams, etc.
a. Number of FTE recruiters on institution's payroll					
b. Number of trips recruiters made to visit or observe student athletes last year					
c. List schools/towns recruiters visited last year.					
d. Number of trips to campus by student athletes and/or their parents that institution subsidized in full or part last year					
e. List and describe any entertainment for students being recruited that institution provides.					
f. Are films or videotapes taken of students being recruited?					
g. List and describe any special support service for recruiting which the institution provides (e.g., telephones, photocopying, travel)					
h. Specify and describe any other facets of recruitment which are not identical for all sports.					

2. **Admission.** Are the applications of *any* athletes for *admission* to the institution ever ranked separately, evaluated differently, or otherwise treated differently than the applications for admission of non-athlete students? ☐ Yes ☐ No If "yes," provide the following information regarding the admissions process.

	Female athletes	Male football players	Male basketball players	Other male athletes	Describe the nature and extent of any differences; spell out differences among teams, etc.
a. What forms must be submitted to apply for admission? (Attach copies if they are not the same for all categories.)					
b. If these forms are evaluated differently, describe how.					
c. What are the grade/test score cutoff points for admission?					
d. Give deadlines for submitting applications and for notification of acceptance/rejection.					
e. Who makes the final decision whether or not the student is admitted? (e.g., regular admissions committee, athletic director)					
f. If others are consulted or informed while admission is pending, indicate who and describe their role/powers.					
g. Specify and describe any other differences in the admissions process.					

AWARDS AND RECOGNITION

The regulation (in section 86.41(c)) specifies that, in addition to those items listed in the equal opportunity "laundry list," the Director of HEW's Office for Civil Rights will consider "other factors" in determining whether or not an institution is providing female and male athletes with overall equal opportunity. One of those factors might be whether athletic awards and institutional recognition for athletic participation are equally available to women and men.

The Title IX regulation generally prohibits sex discrimination in programs or activities which the institution provides or significantly assists. Specifically, the regulation (in section 86.31(a)) provides that:

> *Except as provided elsewhere in [the Title IX regulation], no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient [institution] which receives or benefits from Federal financial assistance.*

Additionally, the regulation (in section 86.31(b)) lists some specific prohibitions, stating that:

> *Except as provided in this subpart [of the regulation], in providing any aid, benefit, or service to a student, a recipient [institution] shall not, on the basis of sex:*
>
> *(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;*
>
> *(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;*
>
> *(3) Deny any person any such aid, benefit, or service;*
>
> • • •
>
> *(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;*
>
> *(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.*

Discussion

It is not uncommon for an institution, as a benefit of participating in intercollegiate athletics, to provide student athletes with awards or other recognition. When such awards are provided, they are often provided to male teams or male athletes only. In other instances, the awards or forms of recognition available to the men's teams are more valuable, more desirable or more prestigious than those available to women's teams.

While such awards are often a very small part of the athletic budget, they may be important signs to the campus community of the value which the institution places on athletic participation by women and/or men. Hence, if an institution finds that it is not providing equal awards and recognition to female and male athletes, publicly equalizing these awards can be an important sign to women and men on campus that the institution is attempting to rectify past inequities.

Strategies for Equal Opportunity

If an institution finds that it is not providing equal opportunity to women regarding athletic awards and recognition, it might consider taking the following steps:

- Provide additional mechanisms (e.g., regular meetings, joint committees) for persons making decisions regarding awards and recognition to female and male athletes to work together to arrive at common standards for athletic awards and recognition.

- Require that all awards and recognition to both female and male athletes be cleared through a central committee or office within the institution. This committee/office should be equally representative of women and men and be charged with identifying sex based inequities and recommending (and implementing) changes to remedy these inequities.

- Otherwise coordinate the process of deciding which athletes should get what awards/recognition, with women and men participating equally in the administration of such awards and recognition, making clear that all such recognition and awards are institutional.

- Increase the number of awards and recognition to women's teams.

Awards and Recognition

–Model Assessment Tool–

1. **Awards and Recognition.** Describe any awards which any part of the institution (athletic department, booster club, etc.) provides in intercollegiate athletic events. (Include all items which the institution either fully or partially subsidizes.)

	Women's sports	Men's football	Men's basketball	Other men's sports	Source of funds (e.g., line item in athletic budget, booster club)	Describe the nature and extent of any differences; list teams.
a. Trophies, plaques						
b. Varsity letters						
c. Jewelry, rings, medals, etc.						
d. Articles of clothing (e.g., blazers, jackets, sweaters, windbreakers)						
e. Other items (e.g., blankets, mugs)						
f. Award or recognition banquets, assemblies, rallies, etc.						
g. List and describe any other awards.						

OTHER BENEFITS AND SERVICES TO STUDENT ATHLETES

The regulation (in section 86.41(c)) specifies that, in addition to those items listed in the equal opportunity "laundry list," the Director of HEW's Office for Civil Rights will consider "other factors" in determining whether or not an institution is providing female and male athletes with overall equal opportunity. One of those factors might be whether other athletic benefits and services are equally available to women and men.

The Title IX regulation generally prohibits sex discrimination in programs or activities which the institution either provides or significantly assists. Specifically, the regulation (in section 86.31 (a)) provides that:

> *Except as provided elsewhere in [the Title IX regulation], no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient [institution] which receives or benefits from Federal financial assistance.*

Additionally, the regulation (in section 86.31(b)) lists some specific prohibitions, stating that:

> *Except as provided in this subpart [of the regulation], in providing any aid, benefit, or service to a student, a recipient [institution] shall not, on the basis of sex:*
>
> *(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;*
>
> *(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;*
>
> *(3) Deny any person any such aid, benefit, or service;*
>
> • • •
>
> *(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;*
>
> *(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.*

Discussion

The range of other services and benefits which are occasionally provided to some or all student athletes is extensive. It includes free or reduced admission to athletic events, priority use of campus recreational facilities, the availability of bands and/or cheerleaders for games and rallies, preferential or different employment opportunities, opportunities to purchase "varsity" items (such as jackets or jewelry), eligibility for membership in varsity clubs, laundry or maid service, etc.

Where such services and benefits are offered, they are generally available to male athletes more readily than to female athletes. When determining whether it is providing equal athletic opportunity, an institution should evaluate these "fringe" benefits of the athletic program, in addition to the direct offerings of the women's and men's program.

A special note is in order regarding several of these "other services and benefits." Although preferential employment opportunities for all student athletes are not prohibited by Title IX, an institution would not be in compliance with either the *employment* provisions of Title IX or other Federal laws if it provided employment opportunities differentially to female and male athletes because of their sex. Additionally, equal opportunity for such areas as bands and cheerleaders should be evaluated in two respects: first, the availability of these services or allied activities for both women's and men's athletic events and, second, the opportunities which students of both sexes have to participate in these allied activities. (For Title IX purposes, *participation* in these activities is covered by the regulation requirements regarding extracurricular activities, not by the athletics section of the regulation.)

Strategies for Equal Opportunities

If an institution finds that it is providing male athletes with greater access to these other benefits and services, it might consider taking the following steps: (Note that, for some areas, such as employment, institutions are required by other sections of the regulation not to discriminate on the basis of sex.)

- Provide additional mechanisms (e.g., joint committees, regular meetings) so that persons responsible for providing such additional benefits or services to female and male athletes can work together to arrive at common standards for the provision of these services and benefits.

- Require that all such other benefits and services for both female and male athletes be cleared through a central committee or office within the institution. This committee/office should be equally representative of women and men and be charged with identifying sex based inequities and recommending (and implementing) changes to remedy these inequities.

- Otherwise centralize the function of providing other benefits and services for both female and male athletes, with women and men participating equally in the administration of these services and benefits.

- Increase the number of other benefits and services to female athletes.

- Reduce the number of other services or benefits to male athletes, in order to eliminate or minimize differences based on sex.

Other Benefits and Services to Student Athletes

–Model Assessment Tool–

1. **Other benefits and services.** Describe any other benefits or services which are available to any student athletes.

	Women's sports	Men's football	Men's basketball	Other men's sports	Source of funds	Describe the nature and extent of any differences; list teams, etc.
a. "Free or reduced rate" admission to other athletic events or other events (Specify rates and events.)						
b. Priority use of campus recreational or other facilities (Specify facilities and nature of priority use.)						
c. Opportunity to *purchase* certain jewelry, clothing, etc. at the full or reduced rate (List under "Awards" if the institution purchases or subsidizes.)						
d. Eligibility for membership in varsity or other clubs (List clubs and eligibility criteria.)						
e. Special counseling services						
f. Early or preferential registration for classes						
g. Registration, etc. handled by athletic department						
h. Preference or different treatment than regular students in student employment or work/study jobs						

1. **Other benefits and services.** (continued)

	Women's sports	Men's football	Men's basketball	Other men's sports	Source of funds	Describe the nature and extent of any differences; list teams, etc.
i. Preference or differential treatment for athletes regarding off-campus employment						
j. Special consideration for employment or "apprenticeships" with the institution's athletic teams (Specify nature of this special consideration.)						
k. Cheerleaders available for games, rallies, etc.						
l. Marching or pep band available for games, rallies, etc.						
m. Pep rallies, pre- or post-game rallies, assemblies, etc.						
n. Laundry or maid service						
o. Preference or different treatment for postgraduate scholarship or employment opportunities						
p. List and describe any other services or benefits						

OTHER SUPPORT SERVICES FOR THE WOMEN'S AND MEN'S PROGRAMS

The regulation (in section 86.41(c)) specifies that, in addition to those items listed in the equal opportunity "laundry list" the Director of HEW's Office for Civil Rights will consider "other factors" in determining whether or not an institution is providing female and male athletes with overall equal opportunity. One of those factors might be relative ability of support services to female and male teams and athletic programs.

The Title IX regulation generally prohibits sex discrimination in programs or activities which the institution either provides or significantly assists. Specifically, the regulation (in section 86.31 (a)) provides that:

> *Except as provided elsewhere in [the Title IX regulation], no persons shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient [institution] which receives or benefits from Federal financial assistance.*

Additionally, the regulation (in section 86.31(b)) lists some specific prohibitions, stating that:

> *Except as provided in this subpart [of the regulation], in providing any aid, benefit, or service to a student, a recipient [institution] shall not, on the basis of sex:*
>
> *(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;*
>
> *(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;*
>
> *(3) Deny any person any such aid, benefit, or service;*
>
> • • •
>
> *(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;*
>
> *(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage or opportunity.*

Discussion

The "support services" available to an athletic program can have a substantial impact on the extent and quality of the athletic offerings for women and men. The coach of a women's athletic team cannot be reasonably expected to match the performance of her male counterpart if she and he have access to widely different support services. For example, the energy or time she and he can devote to coaching is certainly not equal if she must type and file her own letters (while he has a full-time secretary), if she must walk three blocks to use a photocopying machine (while he has one in his office), if she has to wait two weeks to have her team's schedule duplicated through the university's publication department (while his teams have top priority), if she must keep the athletic program's financial records (while he has an accountant to do this), and if she must scout opposing teams (while he has a paid full- or part-time scout). While the disparities at many institutions are not this great, these examples serve to illustrate how the presence or absence of support services can affect the overall scope and adequacy of athletic opportunities for women.

Strategies for Equal Opportunity

If an institution finds that it is not providing equal opportunity for women's and men's programs to receive and benefit from various other support services, it might consider taking the following steps:

- Increase the support services available to the women's program.
- Consolidate the provision of support services for both women's and men's programs, with both women and men participating equally in the administration of these services. The centralized provision of these support services might be jointly administered through the women's and men's athletic departments, by the portion of the university which provides the services or by some neutral third party. The office or committee which provides these services should have a clear mandate not to discriminate on the basis of sex and to work to remedy the lingering effects of past inequities.
- Reschedule such services so that women's and men's programs have equal access to them.
- Provide opportunities for the women's and men's programs to share such services whenever possible.

Other Support Services for the Women's and Men's Programs

–Model Assessment Tool–

1. Support services. Describe any support services which the institution provides to either female and male teams or the women's and men's athletic programs in terms of the following:

	Available to women's teams	Available to men's football	Available to men's basketball	Available to other men's teams	Source of funds	Describe the nature and extent of any differences; list teams, etc.
a. Resources to "scout" other teams (Indicate annual budget.)						
b. Duplication services, photocopying, etc. (Indicate annual budget.)						
c. Telephone service (Indicate annual budget.)						
d. Secretarial and clerical services (Indicate annual budget.)						
e. Supplies, etc. (Indicate annual budget.)						
f. Access to and use of audio-visual equipment for scouting, training, etc. (e.g., videotapes, films) (Indicate annual budget.)						

1. **Support services.** (continued)

	Available to women's teams	Available to men's football	Available to men's basketball	Available to other men's teams	Source of funds	Describe the nature and extent of any differences; list teams, etc.
g. Accounting or bookkeeping services						
h. Access to equipment room						
i. Access to training room						
j. Laundry facilities for uniforms, socks, etc.						
k. Fundraising activities or services						
l. List and describe any other support services, indicating annual budgets where appropriate						

VIII. ORGANIZATIONAL AND STRUCTURAL ISSUES

THE ADMINISTRATIVE STRUCTURES OF WOMEN'S AND MEN'S ATHLETIC PROGRAMS

The Title IX regulation does not specifically address the issue of the administrative structures used by educational institutions for athletic programs. The "Sports Memorandum," however, does address this issue, stating that:

> *[The Title IX regulation] does not address the administrative structure(s) which are used by educational institutions for athletic programs. Accordingly, institutions are not precluded from employing separate administrative structures for men's and women's sports (if separate teams exist) or a unitary structure. However, when educational institutions evaluate whether they are in compliance with the provisions of the regulation relating to nondiscrimination in employment, they must carefully assess the effects on employees of both sexes of current and any proposed administrative structure and related coaching assignments. Changes in current administrative structure(s) or coaching assignments which have a disproportionately adverse effect on the employment opportunities of employees of one sex are prohibited by the regulation.*

Additionally, the "Sports Memorandum" says that "educational institutions are not required to duplicate their men's program for women."

Discussion

At present the majority of colleges operate their women's and men's athletic programs separately. Often these departments are quite different in philosophy, emphasis, structure, and historical development. Many women's athletic programs grew out of, and are still closely tied to, physical education programs, with the result that their major emphasis is on instruction, student participation, and lifetime sports. In contrast, many intercollegiate athletics programs for men have developed fairly independently of the men's physical education program and have focused heavily on high level competition and spectator sports.

While these two traditions are not necessarily contradictory, they have often led to the development of programs for women and men in the same institution which are strikingly different. The Title IX regulation does not define these differences as inherently discriminatory. The *overall* provision of equal opportunity is what determines whether or not an institution's athletic program is in compliance with Title IX. Title IX permits institutions to maintain multiple administrative structures so long as these structures do not lead to discriminatory programs or discriminatory employment opportunities.

In order to assess overall equality of opportunity, however, it is necessary to examine the organization and scope of women's and men's athletic programs closely. Widely divergent structures, responsibilities, and opportunities may require that an institution realign the administrative structures of its women's and men's programs.

Many women in athletics are concerned that a merger of the administrative structures for women's and men's athletics would mean a *sub*merger. They fear that women would both be demoted to "assistants to the athletic director" and lose whatever control they now have over women's sports. They point to departments which have merged, noting that the programs and philosophies of women's athletics have often lost ground as a result of the merger. They also draw analogies between their current situation and the demotion or termination of many black educators when black and white school systems were desegregated after the passage of the 1964 Civil Rights Act.

If, however, an institution is exploring merging the administration of the women's and men's athletic programs, the "Sports Memorandum" notes that it must undertake a comprehensive study to "assess the effects on employees" of the proposed change. Additionally, the institution should thoroughly explore the possible "adverse effects" of merger on the athletic opportunities for women students and the programmatic values and philosophy of the women's and men's programs.

In conducting this assessment, an institution should solicit the views and advice of female and male administrators and athletes, as well as other institutions which have faced similar questions. Then it should develop a comprehensive written and public implementation plan and schedule periodic reviews of the plan to assure that the rights of women (or men) are not compromised. If any change in administrative structure has a "disproportionately adverse effect" on members of one sex, it would violate Title IX.

Examples of changes which would have a "disproportionately adverse effect" on women might include the following: if merging the administration of the women's and men's programs resulted in the automatic demotion of the current women's athletic director to "assistant director"; if women as a group were fired, demoted, or otherwise placed in a less favorable employment position as a result of the merger; if merger resulted in fewer jobs in coaching or athletic administration for women; or if the practical effect of merger were to require women to accept the "male model" of athletics.

If an institution retains separate administrative structures for women's and men's athletics, it should evaluate these structures to determine if they provide equal employment opportunities regardless of sex and if their roles, resources, and access to top administration are relatively equal. In a number of institutions, the administrators of the women's program do not have the same support services, access to the president, etc. as the administrators of the men's program.

It should also be noted that, while it is permissible under Title IX to have separate structures for the conduct of single-sex competitive athletic opportunities for students, these structures cannot discriminate on the basis of sex in hiring or employment.

Strategies for Equal Opportunity

If an institution finds discrimination against women or other inequities in the administrative structures of the women's and men's programs, it might consider taking the following steps:

- Upgrade the scope, power, staffing, and other resources of the women's program.

- Provide new or alternative access of the administrators of the women's program to top administrators, perhaps scheduling regular meetings with the president or the vice president to whom they report.

- Provide an additional mechanism (e.g., a joint committee or regular meetings) to facilitate communication between the women's and men's programs.

- Centralize, integrate, or merge some functions, short of merging the women's and men's departments. Aspects of athletic programs which lend themselves to this type of merger include the use of equipment, facilites, and supplies; scheduling of game and practice times; travel arrangements; medical, health, and training facilities and services; and publicity.

- Study the possibility of merging the administration of the women's and men's athletic programs, paying special attention to whether or not such a merger would have a "disproportionately adverse effect" on women.

- Should the institution decide to merge the women's and men's departments, develop a written and public merger plan outlining the proposed changes, reorganization, the rationale for the changes, the anticipated merger timetable, etc. Prior to the implementation of any merger, female and male employees and students, as well as concerned campus and community organizations, should have the opportunity to comment on the proposal.

The Administrative Structures of Women's and Men's Athletic Programs

–Model Assessment Tool–

1. Develop two detailed organizational charts–one for the administrative structure which has responsibility for women's athletics and one for the administrative structure which has responsibility for men's athletics. Make each chart as specific as possible, indicating the names, titles, and sex of the various persons; lines of authority; etc. Include all staff within the structures (including clerical and other support staff).

2. **Staffing of athletic departments.** Indicate the number of FTE women and men involved in the conduct of women's athletics and in the conduct of men's athletics.

	Women's athletics		Men's athletics	
	Number of women	Number of men	Number of women	Number of men
a. Chief administrator, director, chair				
b. Other administrators				
c. Football coaches and assistant coaches				
d. Basketball coaches and assistant coaches				
e. Other coaches and assistant coaches				
f. Trainers, persons responsible for handling equipment, supplies, etc.				
g. Recruiters				
h. Clerical and support staff				
i. Other. Specify:				
Total Number of Staff				

3. **Access to top administrators.** Do the directors of the women's and men's athletic programs have identical, or nearly identical, access to the top administration of the institution?
   - ☐ Yes
   - ☐ No

   If "no," discuss their relative access in terms of frequency of meetings with the president, vice president(s) or dean(s); the topics of these meetings, etc.

4. **Lines of authority.** Do the directors of the women's and men's athletic programs report to the same person?
   - ☐ Yes
   - ☐ No

   If "yes," identify this person.

   If "no," identify the name and title of the person to whom each reports.

ATHLETIC ASSOCIATION AND SPORTS GOVERNING ORGANIZATIONS

Although Title IX does not address the role of athletic associations and sports governing organizations in detail, the regulation (in section 86.6(c)) does state that:

> *The obligation to comply with [the nondiscrimination requirements of Title IX] is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.*

Title IX also forbids institutions from providing "significant assistance" to organizations or associations which discriminate against students on the basis of sex in violation of the standards set forth in the regulation. Specifically, the regulation (in section 86.31(b)(7)) forbids institutions from:

> *Aid[ing] or perpetuat[ing] [sex] discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees.*

Additionally, the "Sports Memorandum" states that "educational institutions are not required to duplicate their men's programs for women."

Discussion

Currently there are different national associations governing intercollegiate competition for women's and men's athletics. In 2- and 4-year colleges and universities the Association for Intercollegiate Athletics for Women (AIAW) governs competition for women, while the National Association of Intercollegiate Athletics (NAIA) and the National Collegiate Athletic Association (NCAA) are the primary national governing bodies for men. The AIAW and the National Junior College Athletic Association (NJCAA) govern competition for women at the junior and community college level; the NJCAA governs competition for men at this level.

The same reasoning that HEW outlined in the "Sports Memorandum" regarding administrative structures for the conduct of women's and men's athletics can also be applied to separate athletic associations governing women's and men's athletics. That is, "institutions are not precluded" from participating in such separate associations if any separate women's and men's athletic teams exist, and proposed changes in these affiliations should be carefully assessed to determine the effects on students and employees. The interests and abilities of female and male students, as well as the levels of competition and selection of sports, should be considered in evaluating any proposed changes in association membership or affiliation. Changes which have a "disproportionately adverse effect" on women should be avoided.

The Title IX regulation does not deny individual institutions the flexibility to develop their own women's and men's athletic programs, as long as the institution's *total* program ensures both women and men an equal opportunity to compete in athletics in a meaningful way. However, membership in sports governing associations does not change the institution's obligation to provide both overall equal athletic opportunity to students and equal employment opportunity regardless of sex.

Strategies for Equal Opportunity

If an institution wishes to evaluate the effect of athletic associations and sports governing associations on equal opportunity for students or employees, it might consider taking the following steps:

- Carefully assess or evaluate the effects of both current and proposed affiliations on equal opportunity for students and employees, considering such factors as the interests and abilities of both sexes, the levels of competition, the selection of sports, and the length of season.
- Develop a written and public plan outlining any proposed changes and the rationale for these changes, providing female and male employees and students, the commission on the status of women, student and faculty governing organizations, as well as others concerned about equal athletic opportunity, the opportunity to comment on this plan prior to its implementation.

Athletic Associations and Sports Governing Organizations

–Model Assessment Tool–

1. **National Collegiate Sports Governing Associations.** Provide the following information regarding the national athletic associations to which the institution belongs.

	National association for women's athletics	National association for men's athletics
a. Name of the national association(s) to which the institution belongs		
b. Annual fees		
c. Other fees or costs		
d. Year in which institution joined the association		
e. Competitive division or classification of the institution within the association		

2. **Regional associations/conferences.** Provide the following information regarding the regional associations and/or conferences to which the institution belongs.

	Regional association for women's athletics	Regional association for men's athletics
a. Name of the regional association(s) and conferences to which the institution belongs		
b. Annual dues		
c. Other fees or costs		
d. Year in which the institution joined the association		
e. Competitive division or classification of the institution within the association or conference		

3. **Individual membership organizations and other sports organizations.** Provide the following information regarding all individual membership organizations for which the institution (or any part of the institution, including the athletic department, physical education department, and booster club), pays the membership or affiliation fees *and* other national and regional sports associations/organizations to which the institution belongs.

Name of organization	List women's sport or sports that organization addresses	List men's sport or sports that organization addresses	Annual dues	Other fees and costs	Name and sex of institutional representative to organization

4. **Different rules and regulations of collegiate sports governing associations.** Provide the following information regarding differences affecting eligibility, financial aid, etc. which are a result of the different rules and regulations by the organizations which govern the conduct of women's and men's athletic programs.

	National association rules governing women's athletics	Regional association/ conference rules governing women's athletics (if they differ from national rules)	Institutional policy on this issue for women's athletics (if it differs)	National association rules governing men's athletics	Regional association/ conference rules governing men's athletics (if they differ from national rules)	Institutional policy on this issue for men's athletics (if it differs)	Describe the nature and extent of differences.
a. Academic requirements or grade point average required of participants							
b. Recruiting standards, restrictions, etc. (number of visits, allowable expenses, etc.)							
c. Number of years which a student has to use eligibility							
d. Eligibility restrictions on transfer students							
e. Financial aid restrictions on transfer students							
f. Definitions of amateur status and "tainting"							

4. Different rules and regulations of collegiate sports governing associations. (continued)

	National association rules governing women's athletics	Regional association/conference rules governing women's athletics (if they differ from national rules	Institutional policy on this issue for women's athletics (if it differs)	National association rules governing men's athletics	Regional association/conference rules governing men's athletics (if they differ from national rules)	Institutional policy on this issue for men's athletics (if it differs)	Describe the nature and extent of differences.
g. "Redshirting"							
h. Limits on the number or size of football scholarships							
i. Limits on the number or size of basketball scholarships							
j. Limits on the number or size of other financial aid							
k. Sanctions for violating association rules or regulations							
l. List and describe any other major differences between the associations							

THE DEVELOPMENT OF ATHLETIC POLICY

Although the regulation does not directly address the issue of sex bias in the development of athletic policy, it implicitly acknowledges the importance of nondiscriminatory policy development to overall equal opportunity by permitting separate administrative structures for women's and men's sports.

The "Sports Memorandum" states that "educational institutions are not required to duplicate their men's program for women."

Discussion

Perhaps one of the least tangible and yet most important aspects of equality within women's and men's athletic programs is the relative power and decisionmaking authority of the women's and men's athletic programs. In many instances, in part because of the different administrative structures which have grown up around separate programs, there are striking differences in how athletic policy is developed and implemented for women and for men. For example, in some institutions, policy and budget decisions regarding men's athletics are reviewed only by the president, while policy and budget decisions regarding women's athletics in that same institution must be approved by deans or other administrators.

Because the women's athletic program is often dwarfed by the men's program in scope, power, and decisionmaking authority, some women in athletics fear that immediate merger or the immediate development of a unitary policy for all aspects of athletics would require them to accept the "male model" of athletics, a model which some find inconsistent with their athletic practices and/or sports philosophy.

Strategies for Equal Opportunity

The Title IX regulation does not require that institutions develop athletic policy in exactly the same fashion for women and men. However, if an institution finds marked disparities in the development of athletic policy for women and men, it might consider taking the following steps:

- Upgrade the decisionmaking authority of the administrative unit conducting women's athletics.

- Explore methods of developing a unified *institutional* policy in some or all areas for both women's and men's athletics, taking care to assure that the concerns and priorities of women's and men's programs are accorded equal weight in arriving at these policies.

- Centralize, integrate, or merge some functions of the women's and men's programs under a unified institutional policy, taking care to assure that such unified policies do not have a disproportionately adverse effect on either sex.

The Development of Athletic Policy

–Model Assessment Tool–

1. **Policy development.** Provide the following information regarding policy development for women's and men's athletics. (Note that the organization of this section follows the organization of this manual.)

Policy area	Who initiates policy in this area?		Who reviews policy in this area?		Who gives final approval of policy in this area?		Describe the nature and extent of any differences; list teams if differences among teams exist, etc.
	For women's athletics	For men's athletics	For women's athletics	For men's athletics	For women's athletics	For men's athletics	
a. Development of budget							
b. Long-range planning							
c. Equipment, supplies, and uniforms							
d. Scheduling of game and practice times, season length, and number of games							
e. Travel and per diem allowances							
f. Opportunity of students to receive coaching							
g. Academic tutoring and other academic services							
h. Facilities: locker rooms, practice and competitive facilities (purchase, scheduling, etc.)							

1. **Policy development.** (continued)

Policy area	Who initiates policy in this area?		Who reviews policy in this area?		Who gives final approval of policy in this area?		Describe the nature and extent of any differences; list teams if differences among teams exist, etc.
	For women's athletics	For men's athletics	For women's athletics	For men's athletics	For women's athletics	For men's athletics	
i. Medical health and training facilities and services							
j. Publicity and public relations services							
k. Employment: assignment and compensation of administrators, coaches, officials, and other athletic personnel							
l. Financial aid to athletes; athletic scholarships							
m. Recruiting student athletes							
n. Awards and recognition							
o. Other benefits and services to student athletes							
p. Other support services for the women's and men's programs							

IX. THE FUNDING OF INTERCOLLEGIATE ATHLETIC PROGRAMS

The Title IX regulation (in section 86.41(c)) states the following regarding the funding of intercollegiate athletic programs:

> *Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Director [of HEW's Office for Civil Rights] may consider the failure to provide necessary funds for terms for one sex in assessing equality of opportunity for members of each sex.*

The "Sports Memorandum" provides additional information regarding Title IX's treatment of intercollegiate athletic finances. In discussing Title IX coverage of those athletic funds provided neither directly by the government nor directly by the institution, the "Sports Memorandum" states:

> *These sections apply to each segment of the athletic program of a federally assisted educational institution whether or not that segment is the subject of direct financial support through the Department. Thus, the fact that a particular segment of an athletic program is supported by funds received from various other sources (such as student fees, general revenues, gate receipts, alumni donations, booster clubs, and non-profit foundations) does not remove it from the reach of the statute and hence of the regulatory requirements.*

The "Sports Memorandum" further clarifies Title IX's impact on this area, stating that:

> *While the impact of expenditures for sex identifiable sports programs should be carefully considered in determining whether equal opportunity in athletics exists for both sexes, equal aggregate expenditures for male and female teams are not required. Rather, the pattern of expenditures should not result in a disparate effect on opportunity. Recipients must not discriminate on the basis of sex in the provision of necessary equipment, supplies, facilities, and publicity for sports programs. The fact that differences in expenditures may occur because of varying costs attributable to differences in equipment requirements and levels of spectator interest does not obviate in any way the responsibility of educational institutions to provide equal opportunity.*

Discussion

(Note: While the Title IX regulation requires that the funding levels of women's and men's athletics be sufficient to provide equal athletic opportunities to both sexes, it makes no more specific requirements regarding the level of funding. Further, it does not require that the funding process or funding sources for women's and men's programs be identical. Because athletic inequities often stem from differences in funding levels and/or differences in the funding process or sources of funds, this section is included to assist education institutions in exploring these issues. Although many of the issues raised are not directly derived from specific requirements in the Title IX regulation, exploration of these questions should assist institutions in evaluating whether or not they are providing the overall equality of athletic opportunities required by Title IX.)

There are few areas which are as widely discussed and little understood as the funding of intercollegiate athletics. Indeed, entirely apart from the issue of equal opportunity for women, many institutions are now taking a closer look at their athletic budgets because of inflation, rising costs, declining student or spectator interest, and/or declining student enrollments. In his 1974 report to the American Council on Education, George Hanford reported that a number of key segments of the academic community were keenly concerned about athletic finances.* He found the following attitudes, some confirming and some contradicting conventional wisdom:

- **State legislators, governing boards, governors:** Although "all seems for the moment to be relatively quiet on the state-level front, [one cannot discount] the likelihood that action may soon break out in response to financial problems or to the demands of students, particularly in the interests of minorities and women." Contrary to popular opinion, there is only "a small and statistically insignificant positive relationship" between the institution's success in athletics and its success in securing appropriations from the state. "[T]he impact of winning teams on the financial disposition of legislators is virtually imperceptible." We can expect "new and greater state attention to budgets, by legislators who decry the decline of local relevance. . .and by statewide governing boards whose 'preoccupation with cost reduction' will inevitably lead them to college sports."

- **College presidents:** "Recent generations of college presidents have continued generally to ignore the responsibility for the ethical conduct of college sports which an earlier generation abdicated. [However,] a new configuration of problems [including severe financial problems] has redirected presidential attention towards intercollegiate athletics."

- **Faculty:** "Most faculty members, unless forced to do so, do not think about intercollegiate athletics at all." Although "faculty disinterest is nothing new," we can expect increased faculty attention to athletic programs when the sports enterprise comes "into direct competition with academic departments for the dollars available."

- **Alumni:** "Alumni support for intercollegiate athletics may not be as widespread or as strong as a vocal minority would have it appear—or as college presidents seem to fear. . . . [I]t appears that private colleges that have deemphasized or abandoned football have not seriously suffered from loss of alumni financial support."

- **Boards of trustees:** "While it is true that there are a few overzealous trustees who put the interests of the men's athletic department above all others, it is generally true that whatever attitudes the members of any given board collectively hold about the role of college sports, they are most likely the ones that evolved under earlier boards and are being supported by the current administration. In this and similar regards, trustees tend not to be agents of change."

- **Athletic directors and coaches:** These professionals in the field are "generally favorable toward but differentially optimistic about intercollegiate athletics." "Athletic directors are variably concerned about finances. . .and are becoming acutely aware of the added expenses that will be necessary to deal with the demands of women for more equitable treatment."

- **Admissions and financial aid officers:** At institutions which have low profile athletic programs, admissions and financial aid officers are "not particularly concerned because they rather than the athletic department make the decisions as to which athletes will get in and get aid." At institutions with *big time men's athletic programs,* however, the athletic departments often handle admissions and financial aid, a fact which directors of admissions and financial aid find "disconcerting."

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* George Hanford, *An Inquiry into the Need for and Feasibility of a National Study of Intercollegiate Athletics: A Report to the American Council on Education* (Washington, D.C.: American Council on Education, 1974), pp. 28-60. Emphasis deleted.

Although whether or not a sport makes a profit is clearly not the standard for determining equal opportunity, a great deal of speculation about the "profitability" of the so-called revenue producing sports has accompanied discussions of Title IX and athletics. During 1975 Congressional hearings on Title IX, the difficulty of tracing the dollars which support athletic programs became apparent. For example, a substantial amount of the resources and staff which an athletic program uses may be entirely provided by another part of the university and, as such, may never appear in the athletic budget. In testifying before the Senate Subcommittee on Education, Donna Lopiano (director of intercollegiate athletics for women at the University of Texas at Austin)* provided the following insight into the economics of big time college athletics:

> *Let's take a closer look at [the University of Texas'] $2.4 million men's athletic program which is often considered a prime example of an athletic program supported through income derived from big-time football. Believe it or not a good case can be made that football at the University of Texas at Austin under one of the finest football coaches in the country is not even profit making. When the cost of administrative and support personnel salaries, coaches' salaries, wages, operating expenses, scholarships, utilities, public relations, office supplies, telephone, salary benefits, insurance, maintenance, programs, cheerleaders, band, astroturf and allocation for budget adjustment costs are taken into consideration the $1.6 million in revenues solely produced by UT football are also solely spent on that same football program which costs approximately $1.6 million to run. If you go one step further in the assessment of costs to the University and consider the amortization of a 75,000 seat stadium, football is costing the University of Texas a great deal more money than the revenue it purportedly generates. We may then conclude that the total athletic program is not dependent on revenues derived from football gate receipts but is either dependent on $450,000 in income which is derived from an optional $20 student fee which provides free admission to all athletic events or from the money the University provides for capital expenditures which in turn frees other monies for operating expenses utilization. What on the surface gives the illusion of profit or net income, is nothing more than cash flow being used for operating expenses. It all depends on how you wish to interpret the data. We know that we can use statistics to support almost any proposition. What I am suggesting is that the Tower Amendment [regarding Title IX coverage of "revenue producing" sports] has found it convenient to maintain the myth that big-time football and basketball are not only revenue producing, but profit making enterprises which support all other teams in the athletic program. To accept this assumption as valid would be a grave error. We are simply not used to perceiving University support via capital expenditures as a cost factor in our programs.*

The Title IX regulation's coverage of athletics is based on the assumption that an institution can provide equality of opportunity without exact equality of expenditure. The regulation makes clear that institutional compliance with the Title IX standards in athletics does not demand dollar-for-dollar matching expenditures for each sex. (Nor, for that matter, does the regulation *forbid* an institution from implementing a dollar-for-dollar standard on its own.) Rather, the *opportunities* provided for women and men are the major criteria for determining whether or not an institution is providing equal athletic opportunity under the standards set forth in the Title IX regulation. While the regulation explicitly does not require equivalent expenditures for each sex, disparities in expenditures as they relate to inequalities in opportunities for males and females may be one factor in determining whether or not opportunities are equal.

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* *Prohibition of Sex Discrimination, 1975: Hearings Before the Subcommittee on Education of the Committee on Labor and Public Welfare, United States Senate*, 94th Congress, First Session (1975), pp. 121-122.

In evaluating inequities in opportunity which result from inequities in funding, institutions should keep in mind that they must compare the *total* women's program to the *total* men's program. That is, *all* male sports (including basketball, football and other so-called revenue producing sports) must be compared with *all* female sports to determine if, overall, the institution is providing equal opportunity. In assessing whether an institution is complying with the athletic provisions of Title IX, the so-called revenue producing sports and funds derived from private sources are considered in the same manner as other sports and funds. Also, contact and noncontact sports are evaluated together, not separately, in all equal opportunity comparisons under Title IX.

While funding is not the government's primary measure of equality in assessing Title IX compliance, those persons evaluating equal opportunity must have a full understanding of their institution's funding mechanisms and priorities, as well as of the differential amounts of resources available to women's and men's programs, if they are to ask meaningful questions and arrive at meaningful answers.

The process of undertaking and completing such an analysis is not likely to be simple. At many institutions the funding of athletics is intricately interwoven with the funding of other aspects of the institution and on many campuses the sources of funds for the women's athletic programs are dramatically different from those for the men's program. For example, funds for athletic activities (for women and/or men) may come from student activity fees, a line item in the institution's budget, a special appropriation from the state legislature, revenues from television or radio contracts, athletic booster clubs, institutional athletic foundations, earmarked contributions, assessments of students for "capital improvements" (e.g., an athletic stadium), ticket sales, or the instititution's physical education budget. The different funding patterns are practically limitless. In some institutions, for example, outside booster clubs are the primary vehicle for distributing athletic scholarship money to male athletes. While differences in the source of funds for women's and men's programs make analysis of equal opportunity difficult in some instances, the source of financing is not relevant in determining an institution's coverage by, or compliance with, Title IX.

Similarly, the level and pattern of expenses for women's and men's sports often differ greatly, even within the same institution or for the same sport. In George Hanford's 1974 study for the American Council on Education, he estimated that the average budget of women's departments was equal to only *2 percent* of the men's budgets. Although the budgets for women's athletics have generally increased somewhat since then, they still clearly lag far behind the budgets for men's athletics on most campuses.

In addition, the financial control and budgeting authority of the women's and men's athletic departments have often been quite different. It should be noted that Title IX does not address the internal budgetary process of institutions unless that process is discriminatory on the basis of sex and does not afford equal opportunity on the basis of sex.

Strategies for Equal Opportunity

After evaluating the funding process for both women's and men's intercollegiate athletics, an institution might wish to consider taking the following steps if it finds sex-based inequities which result from the funding process itself or the levels or amounts of funding provided for women's and men's programs:

- Raise, allocate, or appropriate additional funds in order to provide equal opportunities. Among other options, State-supported institutions might consider exploring special appropriations from the state legislature to remedy inequities.
- Channel any new funds which become available to the team or program which has not been afforded equal opportunity.

- Schedule joint fundraising activities for women's and men's teams.

- Consolidate or centralize the funding process for women's and men's athletics, taking care to assure that women and men have equal representation and decision making authority. This could be done, for example, through joint action by the women's and men's departments or the office of the university official responsible for athletics. The office or committee which coordinates this centralized funding process should have a clear mandate not to discriminate on the basis of sex and to implement funding patterns which eliminate both discriminatory funding patterns and the effect of past discriminatory funding of athletic programs.

- Reallocate funds so that the inequities are eliminated.

- Institute cost saving methods or systems for both women and men. For example, joint purchase of equipment, supplies, uniforms, etc. might enable the institution to save money by ordering in bulk, in addition to saving administrative and clerical time. This freed time could, in turn, be used to advance efforts to provide equal opportunities.

- Revise the funding process so that it does not have the effect of providing discriminatory opportunities.

- Survey the athletic program to identify any possible "frills" which might be eliminated.

- If a significant amount of the funds for the athletic program comes from outside sources (such as a booster club, an educational foundation, earmarked donations, etc.), undertake a thorough study of these funding sources to determine such things as: what services they provide to (and receive from) the institution; if their financial contributions benefit male over female teams; and how they operate within the institution's structure. Although such funds do not exempt all or part of the institution's athletic program from Title IX, a thorough understanding of these organizations can assist the institution in providing overall equal athletic opportunity.

The Funding of Intercollegiate Athletic Programs

–Model Assessment Tool–

[Note that sport-by-sport budgets for intercollegiate, club, and intramural sports are requested in the third, fourth, and fifth model assessment tools under "The Selection of Sports and the Levels of Competition.]

1. **Budget process.** Describe the process by which budgeting and funding decisions are made for female and male athletic teams in terms of how priorities are established, what budget ceilings exist, who develops the original budget, who reviews the budget and has final decisionmaking authority, etc.

   a. **Women's athletics** (Specify any differences among teams.)

   b. **Men's football**

   c. **Men's basketball**

   d. **Other men's teams** (Specify any differences among teams.)

2. **Source of funds.** Provide the following information regarding the source of funds for various aspects of the intercollegiate athletic program. If there is more than one funding source so indicate. Note that this chart summarizes information which is on individual charts throughout this manual.

	For women's teams	For men's football	For men's basketball	Forsother men's teams	Describe the nature and extent of differences; provide rationale; list teams, etc.
a. Overall budget					
b. Equipment, supplies, and uniforms					
c. Travel and per diem allowances					
d. Academic tutoring and other academic services					
e. Facilities: Locker rooms, practice and competitive facilities					
f. Medical, health and training facilities and services					

2. Source of funds. (continued)

	For women's teams	For men's football	For men's basketball	For other men's teams	Describe the nature and extent of differences; provide rationale; list teams, etc.
g. Housing and dining facilities and services					
h. Publicity and public relations services					
i. Employment: administrators, coaches, officials, and other athletic personnel					
j. Financial aid to athletes: athletic scholarships					
k. Recruiting student athletes					
l. Awards and recognition					
m. Other benefits and services to students					
n. Other support services for the women's and men's programs					

3. **Direct funding sources.** Provide the following information regarding direct funding of intercollegiate athletics for women and men. (Although it is often difficult to track funds with great precision, attempts should be made to provide as much of the following information as possible, estimating amounts when necessary.)

Source of funds	Annual dollar amount which is provided to women's athletics programs	Annual dollar amount which is provided to men's football	Annual dollar amount which is provided to men's basketball	Annual dollar amount which is provided to other men's teams	Total dollar amount received from this direct funding source	Describe the nature and extent of differences; provide rationale, etc.
a. Institutional budget: Line item for women's and men's athletics jointly						
b. Institutional budget: Line item for men's athletics						
c. Institutional budget: Line item for women's athletics						
d. Institutional budget: Line item for athletic financial aid						
e. Institutional budget: Line item for physical education (for women and/or men)						

3. **Direct funding sources.** (continued)

Source of funds	Annual dollar amount which is provided to women's athletics programs	Annual dollar amount which is provided to men's football	Annual dollar amount which is provided to men's basketball	Annual dollar amount which is provided to other men's teams	Total dollar amount received from this direct funding source	Describe the nature and extent of differences; provide rationale, etc.
f. Institutional budget: Capital expense						
g. Institutional budget: Other direct funding (Indicate specific line items.)						
h. Investments from permanent or temporary investments or endowment funds						
i. Direct state or local governmental support (e.g., line item in state budget, special appropriation) (Indicate any restrictions or specific conditions tied to these funds.)						
j. Students: Student activity fees, athletic fees, other direct student fees						
k. Students: Other assessments of students used for athletics (e.g., building fees, capital expense fees, etc.) (Indicate amount and type of fee.)						

3. Direct funding sources. (continued)

Source of funds	Annual dollar amount which is provided to women's athletics programs	Annual dollar amount which is provided to men's football	Annual dollar amount which is provided to men's basketball	Annual dollar amount which is provided to other men's teams	Total dollar amount received from this direct funding source	Describe the nature and extent of differences; provide rationale, etc.
l. Students: Funds raised by student athletes						
m. Funds received from TV/radio contracts						
n. Funds received from guarantees, options						
o. Revenues from post-season games not included elsewhere						
p. Funds received from athletic conference or other association (Indicate what conference/ association and reason for funding.)						
q. Funds provided by institutional foundations or other voluntary organizations						

3. Direct funding sources. (continued)

Source of funds	Annual dollar amount which is provided to women's athletics programs	Annual dollar amount which is provided to men's football	Annual dollar amount which is provided to men's basketball	Annual dollar amount which is provided to other men's teams	Total dollar amount received from this direct funding source	Describe the nature and extent of differences; provide rationale, etc.
r. Funds provided by athletic booster clubs, athletic corporations, etc.						
s. Funds from ticket sales to men's athletic events–gate receipts (excluding tickets paid for by student fees)						
t. Funds from ticket sales to women's athletic events–gate receipts (excluding tickets paid for by student fees)						
u. Contributions or gifts earmarked for athletics: From individuals or alumnae/i						
v. Contributions or gifts earmarked for athletics: From organizations or corporations (Indicate which organizations/corporations.)						
w. Other direct sources of funding (Indicate source and amount.)						

4. **Indirect institutional support.** Provide the following information regarding indirect support for intercollegiate athletics provided by other parts of the institution. (Estimate values if more precise figures are not available.)

Source of Support	Name of department/unit which provides these services	Annual dollar value of services to women's athletics	Annual dollar value of services to men's football	Annual dollar value of services to men's basketball	Annual dollar value of services for other men's athletics	Total annual dollar value of services	Describe services and the nature and extent of any differences; provide rationale, etc.
a. Released time for coaches, recruiters, trainers, physical education teachers, etc. whose salaries are paid for out of "nonathletic" funds (Include institutional foundation employees who spend over 10 percent of their time recruiting athletes.)							
b. Administrative salaries, personnel							
c. Secretarial assistance							
d. Facilities, training equipment, other equipment, supplies which do not appear in athletic budget							
e. Medical and health services and facilities							

4. Indirect institutional support. (continued)

Source of Support	Name of department/ unit which provides these services	Annual dollar value of services to women's athletics	Annual dollar value of services to men's football	Annual dollar value of services to men's basketball	Annual dollar value of services for other men's athletics	Total annual dollar value of services	Describe services and the nature and extent of any differences; provide rationale, etc.
f. Housing and dining facilities or services which do not appear in athletic budget							
g. Grounds and building maintenance services which do not appear in athletic budget (for stadiums, gymnasiums, game and practice fields, etc.)							
h. Public relations, promotion publicity, publication services provided by other portions of the institution							
i. Financial aid to athletes which do not appear in athletic budget							

4. Indirect institutional support. (continued)

Source of Support	Name of department/ unit which provides these services	Annual dollar value of services to women's athletics	Annual dollar value of services to men's football	Annual dollar value of services to men's basketball	Annual dollar value of services for other men's athletics	Total annual dollar value of services	Describe services and the nature and extent of any differences; provide rationale, etc.
j. Recruiting costs (e.g., telephone and travel) which do not appear in athletic budget.							
k. Administrative services, overhead costs, accounting and bookkeeping, telephone, rent-free space, office supplies, utilities, etc.							
l. Printing, photocopying, duplication							
m. Other indirect institutional support (Indicate nature of support and value.)							

5. **Auxiliary enterprises.** Provide the following information regarding the financial status of auxiliary enterprises which are operated by (or in conjunction with) the athletic program:

	Who administers this enterprise?	Annual gross receipts	Annual expenses (including salaries, administrative costs, promotions, etc.)	Annual net income	If enterprise makes a net profit, indicate how much of this amount specific women's and men's teams receive.	If enterprise runs at a deficit, who picks up this cost?
a. Operation of concessions, sale of programs, parking fees, etc. at athletic events						
b. Athletic dining halls or residence halls, including charges to guests						
c. Rental of stadiums, other athletic facilities, etc.						
d. Other auxiliary enterprises (Describe the enterprise.)						

6. **Guarantees.** Does the institution either give or receive "guarantees" (i.e., guaranteed payment for playing a particular school in a particular sport in a particular season) for any sport? ☐ Yes ☐ No If "yes," describe the role of these guarantees for the following types of teams in terms of the following:

	Women's teams	Men's football	Men's basketball	Other men's teams	Specify teams; describe the nature and extent of any differences; provide rationale, etc.
a. How far in advance are such guarantees agreed upon? (in months)					
b. Who is responsible for arranging and negotiating such guarantees?					
c. What is the dollar amount per season of guarantees promised to other teams/institutions?					
d. What is the dollar amount per season of guarantees promised to this institution?					
e. What is the annual total of guarantees paid out?					
f. What is the annual total of guarantees received?					

7. **Fundraising.** Does the institution, athletic booster club, etc. undertake any fundraising efforts which primarily or exclusively benefit the women's and/or the men's athletic program? ☐ Yes ☐ No If "yes," provide the following information regarding these efforts:

	For women's teams	For men's football	For men's basketball	For other men's teams	For men's sports in general	For women's and men's teams jointly	Describe the nature and extentt of any differences; provide rationale, etc.
a. What fundraising methods are used? (e.g., letters on university stationery, fundraising events, special appeals, earmarking on alumnae/i contributions, etc.)							
b. Who coordinates these efforts?							
c. What staff and resources are provided for these efforts?							
d. Who provides staff and resources?							

X. SELECTED RESOURCES

CONGRESSIONAL HEARINGS ON TITLE IX

Hearing on House Concurrent Resolution 330 (Title IX Regulation): Hearing Before the Subcommittee on Equal Opportunities of the Subcommittee on Education and Labor, House of Representatives. 94th Congress, First Session (1975) ["Hawkins hearings"].

Prohibition of Sex Discrimination, 1975: Hearings Before the Subcommittee on Education of the Committee on Labor and Public Welfare, United States Senate. 94th Congress, First Session (1975) ["Tower hearings"].

Sex Discrimination Regulations: Hearings Before the Subcommittee on Postsecondary Education of the Committee on Education and Labor, House of Representatives. 94th Congress, First Session (1975) ["O'Hara hearings"].

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Sportswoman, published 10 times a year, is available for $6.50 a year from Fine Frock Publishers, Inc., 3732 Mount Diablo Blvd., Lafayette, California 94549.

womenSports, published monthly, is available for $8.95 a year from P.O. Box 4964, Des Moines, Iowa 50340.

MAJOR COLLEGIATE SPORTS GOVERNING ORGANIZATIONS

Association for Intercollegiate Athletics for Women, 1201 16th Street NW, Washington, D.C. 20036.

National Association of Intercollegiate Athletics, 1205 Baltimore, Kansas City, Missouri 64105.

National Collegiate Athletic Association, U.S. Highway 50 and Nall Avenue, P.O. Box 1906, Shawnee Mission, Kansas 66222.

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